United States Court of Appeals
for the Second Circuit

APPENDIX

77-7037

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In The

United States Court of Appeals

For The Second Circuit

NATIONAL AUTO BROKERS CORP., et al.,
Plaintiffs-Appellants,

-against-

GENERAL MOTORS CORPORATION, et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York.

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JOINT APPENDIX - VOLUME 11

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PAGINATION AS IN ORIGINAL COPY

You met with Mr. Belcher in what month and year?

A December of 1967.

Q How long after that did you commence this action?

A About three years. It was December of 1970.

Q Did you attempt to stay in business during that three-year period?

A Yes. I continued to attempt to stay in business. I expected relief from these various agencies. I was hoping for relief momentarily. I was assured I might get help.

MR. KLEINBARD: It is the witness' state of mind, your Honor.

Q After commencement of this action in December of 1970, did you attempt still to remain in business?

A Yes.

Q How long?

A For again almost three years until --

Q Don't go too far. Give a date, please.

A Until April of 1973.

Q And then you stopped selling franchises?

A Yes. Once I established that I would not get cars --

Q You stopped selling franchises?

A Yes.

MR. KLEINBARD: We are going beyond December 10, 1970, your Honor.

THE COURT: I won't permit very much.

Q There was a reference by Mr. Kleinbard to the Pocono Mountains. Could you state what that reference was about?

MR. KLEINBARD: Your Honor, if I am not going to be permitted to introduce the statement I don't see why this witness should be able to explain it.

MR. PERSON: Mr. Kleinbard, in his opening statement, had referred --

THE COURT: You are not having redirect about Mr. Kleinbard's statement in the opening statement. This is redirect examination relating to Mr. Kleinbard's cross. Limit it to that, please.

THE WITNESS: He put that in the record, your Honor.

THE COURT: Please.

If you want to go into that, we'll go into that. It's entirely up to you.

MR. PERSON: As soon as I get some documents I would enjoy the opportunity but I don't have the documents.

THE COURT: Then you won't enjoy the opportunity.

Q You stated that you went public. What was the purpose of going public?

A To raise additional cash to promote our business.

MR. KLEINBARD: Your Honor, before we develop this line further I want to register an objection. It's post '70 and they went public in '71.

MR. PERSON: We filed before.

THE COURT: When did you file?

MR. PERSON: Maybe July or August of '70, your Honor, in that time frame.

MR. KLEINBARD: The letter I submitted was January 29 --

MR. PERSON: It was quite a few months in the SEC.

THE COURT: Are you now going to have him ask the purpose of proceeding in July of 1970?

MR. PERSON: I was going to go into the share ownership.

THE COURT: That was asked on cross. Go ahead.

Q You've stated already that you owned 100 per cent of Nabcor subject to some kind of commitment of a sort. Do you recall when shares were ultimately issued in that corporation, Nabcor?

A At the time that you, Mr. Person, started to make the file for the SEC, which was in July or August of 1970, that's when I split the stock and distributed the shares.

Q Do you recall whether any shares prior to that were in the possession of any other persons, any shares of Nabcor were possessed by your brother, mother, sister, etc.?

A There were no shares.

Q This was the first distribution?

A Yes.

Q Mr. Kleinbard referred to an exhibit, the letter to Weinbaum?

THE COURT: What is the number?

MR. PERSON: PPP.

I would like to now offer the full letter in evidence.

MR. KLEINBARD: I object to it, your

Honor, on the ground it contains hearsay, almost exclusively hearsay.

THE COURT: You read a portion of that?

MR. KLEINBARD: I read a portion of it. There are two sentences in evidence and you didnot permit any further introduction.

THE COURT: You offered more than I received?

MR. KLEINBARD: Yes.

THE COURT: I will not receive this letter. The objection is sustained.

MR. PERSON: I would like to put my argument on the record --

THE COURT: You can do that later.

MR. PERSON: Mr. Kleinbard has continually urged Mr. Maiorana's adoption of the pretrial brief through the affidavit. I would like to offer the whole affidavit.

THE COURT: Isn't it already in?

MR. KLEINBARD: I object to it. The only part that I am prepared to consent to is the part that states there were a certain amount of errors, paragraph 10.

(Pause)

THE COURT: Objection sustained.

THE COURT: You are objecting to the form of that? I'll overrule that.

A Yes. The reason was that in my conversation with Mr. Belcher, when I explained the problems and everything -- and I won't go through all of that again -- it was his suggestion, when I insisted that this be stopped and a letter be sent out --

THE COURT: I don't see why we have to have this rehearsed over and over again. I will sustain the objection to the question. It's too general, at least it's drawing out a long background which we have already heard.

Q Were you and Nabcor trying to defraud General Motors or any General Motors franchises in connection with your discussions concerning a fleet certificate?

A Absolutely not. It was Mr. Belcher's suggestion to offer a fleet certificate to solve the problem which I insisted was GM's problem.

Q Did you have full information about the fleet certificate at the time you went into Mr. Belcher?

A Yes.

Q Did you know the legal effect of the fleet certificate when you had your discussions with

Mr. Belcher? Were you aware of the full legal ramifications of the fleet certificate?

A I didn't know what the legal ramifications were of the fleet certificate. I knew that a lot of dealers insisted on my having a fleet certificate in order to give us cars.

MR. KLEINBARD: I move to strike.

THE COURT: We have had that.

Motion denied.

Q Mr. Kleinbard has suggested that your testimony in part is derived solely because you have read the 360-page pretrial brief which I might show you. (exhibiting)

Did you have any discussions with me prior to the preparation of this pretrial brief?

A No. Not that I can recall.

Q Did you discuss your claims against GM and others with me prior to January 26, 1976?

A I had discussed my claims when we started this suit back in 1970 and 1971, if that's what you are referring to, Mr. Person, yes.

Q And also from to time throughout the period up to the date of January 26, 1976?

A Yes.

Q Is your testimony here today in this trial based upon what you recollect or is it based upon, to any extent, what you have read in the pretrial brief?

A It's based on my recollection.

Q Defendants' Exhibit A is an application to GMAC naming the dealer, Matt Slap Chevrolet; purchaser, Nabcor. I show you this Exhibit A. You've seen it before, I believe.

Do you know who prepared that application?

Could you just speak up instead of shaking your head?

A No, I don't.

Q Did you ever see it before this litigation?

A No. I never saw it until it was introduced in this proceeding.

Q Look at the information that is on it, the information that has been filled in.

A Yes. Go ahead.

Q Can you see any information on that which you can recall having supplied to any person for purposes of putting on this application?

Q No. I don't recall supplying any of this information.

Q Did you ever get a copy of that?

certified or audited statements?

A In 1972 I believe our financials were certified from that point on.

Q Was that the first time that Nabcor had certified financials?

A Yes.

Q So that Mr. Thomas then gave his recommendation for that, he did recommend that the proposal be accepted without any Nabcor certified --

MR. KLEINBARD: I object to that on the ground it is sheer argument.

THE COURT: Objection overruled.

Q Is that correct?

A Yes.

Q Would a personal guarantee form -- Mr. Kleinbard said for GMAC -- do you recall the circumstances under which you were asked to prepare or submit a guarantee financial statement?

A My personal guarantee?

Q Correct, Exhibit WWW, that has the information $600,000 for the Nabcor stock?

A I was asked to supply that by the dealer Matt Slap Chevrolet. They wanted a personal statement, personal guarantee by me in addition to their guarantee to GMAC.

So in addition to the collateral of the cars, that was quite a bit here they were asking, but I was willing to give it.

MR. KLEINBARD: I move to strike the latter part with respect to the cars. There is no testimony about that one way or the other.

THE COURT: Motion denied.

Q Do you recall your meetings with Mr. Karney after you met with Mr. Belcher, two meetings with Mr. Karney you testified I believe?

A Yes.

Q Did Mr. Karney at any time say that he had prior knowledge of Nabcor?

A No.

MR. PERSON: I would like to refer to exhibits in evidence dated back in 1966, December 14, December 15, December 21, December 29; January 6, 1967, and January 24, 1967, all of which bear Mr. Karney's name.

These are Exhibits 85, 81, 82, 83, 80 and 84.

THE COURT: Wait a minute, I don't know what you are doing. Are these in evidence?

MR. PERSON: These are in evidence and I

as quickly as possible?

MR. KLEINBARD: I object to that as leading us where we were discussing before.

MR. PERSON: I am stopping at that point. I want to establish the speed.

THE COURT: You already have.

MR. PERSON: I would like to offer this in evidence.

MR. KLEINBARD: The entire document?

MR. PERSON: Yes.

MR. KLEINBARD: I object, your Honor.

THE COURT: Sustained.

Q After Mid-Town refused to give automobiles to you or about the time of your conversation with Mr. Englert, could you describe what Nabcor did, if anything, with the orders that were placed with Don Allen or Mid-Town at that time?

A Well, we reordered them, some of them, with other dealers. And some as a result of the delay accorded by Mid-Town we lost. What we did, we ordered some through another dealer, we attempted to.

Q Was in fact Nabcor appreciative of the transaction that it had with Don Allen?

MR. KLEINBARD: I object, your Honor.

THE COURT: Overruled.

A We were not appreciative at all. We were higly indignant about the whole thing.

Q On the Queen City Chevrolet situation, there were two trucks and an automobile. Do you recall which of the trucks you were referring to, the first or the third vehicle, when you testified there were no more orders that Nabcor got from Queen City?

A The third vehicle. That was the truck, El Comino, which is a sort of very deluxe --

THE COURT: The third vehicle was the one you were referring to?

THE WITNESS: Yes.

THE COURT: Next question. Anything else?

MR.PERSON: This is going to the brokers, Nabcor brokers.

THE COURT: What is your question?

Q I would like to, if you can, I will read the nqme of the broker and have you state whether you are aware of the reason why the broker no longer functioned as a Nabcor broker.

MR KLEINBARD: Excuse me, your Honor, I object to that. If he wants to do that he ought to bring the brokers here.

MR. PERSON: From the standpoint of business, that he is entitled to be able to say what his relationships were and what happened with the brokers.

MR. KLEINBARD: The purpose of establishing the --

THE COURT: You are trying to prove what business the broker did and how he conducted his business and what he did and how he tried to solicit orders and how many orders he got?

MR. PERSON: His business relationship with Nabcor.

THE COURT: That is a general question, though, and it is a problem to me, Mr. Person, because it could open the door for a whole lot of miscellany that might be opinion, hearsay and so forth, so I will sustain an objection to that question.

There may certainly be admissible evidence that this witness can testify to, I just don't know. Ask your question.

Do you want to ask how many orders he got from different brokers? I thought that was being tabulated.

MR. PERSON: We got a tabulation. I don't have a chronological tabulation of all orders received from brokers. I have this in the log and I have a tabulation as to each broker, and the date of each order.

THE COURT: And whether it was filled or not?

MR. PERSON: From what the log states. But I wanted to be able to --

THE COURT: That can be presented in a tabular form.

MR. PERSON: I wanted to be able to have him describe his transaction as it were with the various Nabcor franchisees so that the Nabcor position concerning the franchiseescan be known in this trial.

THE COURT: Ask your question and we will see if it is a proper question.

Q Do you know a broker by the name of John P. Poth?

A Yes.

Q What type of broker was he?

A Master broker.

Q Do you remember whether Mr. Poth made any complaints to Nabcor?

MR. KLEINBARD: I object to that, your Honor.

THE COURT: I will have to ask the jury to go out and take their recess now.

(Jury left the courtroom.)

THE COURT: What are you attempting to do now?

MR. PERSON: I would like to show the relationship between Nabcor and each of its brokers to the extent Mr. Maiorana can remember that.

THE COURT: What do you mean by relationships?

MR. PERSON: If a problem developed between Nabcor and its franchisees.

THE COURT: Let's take Mr. Poth. What would you show about him?

MR. PERSON: Actually I was going to rely on the witness's memory.

THE COURT: You don't know what he is going to testify?

MR. PERSON: I don't know all about it, your Honor, no. But whatever the events were, I think the witness would be the one most likely to remember. So I wanted to go over and see what it is that he can recall.

In many cases I have gone over and I do know in some instances that the answer is going to be that the problem was getting cars and other problems as well.

THE COURT: That just absolutely can't be done this way. The real test is going to be whether an order was submitted to Nabcor, and that is a fact which would be a matter of record and conceivably within Mr. Maiorana's knowledge, although I wouldn't expect him to remember order by order. But at least Nabcor's records or Nabcor witnesses can testify to orders received and when they received these orders.

Presumably that is a matter of record and that is Exhibit 450. So that is admissible.

It is certainly admissible to have Nabcor state or Nabcor's records show these orders were filled, these orders weren't. That would be at least evidence along that line but at least the bare bones.

Now, if you have a broker are you going to try to show there were some brokers who submitted orders to Nabcor where the orders could not be filled?

MR. PERSON: Yes. We have that, but that isn't the whole picture.

THE COURT: That is part of the picture you want to show now?

MR. PERSON: Yes.

THE COURT: Where is the evidence about it?

You start with very concrete, definite evidence about the orders received and orders filled and orders not filled. Do you have that evidence?

MR. PERSON: I have tabulated the instances where there were cancellations.

THE COURT: What do you mean by cancellations? Who cancelled what?

3 MR. PERSON: Colonial Cadillac, for example, all 43 orders were cancelled.

THE COURT: When?

MR. PERSON: Some time after the end of 1966.

THE COURT: Let's go on beyond Colonial Cadillac.

MR. PERSON: Cunningham Buick had an order on 9/1968, refused around 10/3/68.

THE COURT: What entity?

MR. PERSON: Cunningham Buick, successor to Sharkey.

THE COURT: An order placed by Nabcor to Cunningham Buick?

MR. PERSON: Yes.

THE COURT: They didn't fill it?

MR. PERSON: They refused to go through with the order, a refusal on or about 10/3/68.

THE COURT: Do you have anything between the end of 1966 with --

MR. PERSON: I don't have it chronological, your Honor. I developed all of it dealer by dealer going through the book.

A.C. Chevrolet, 8/67, non-delivery.

THE COURT: These are related to brokers? The brokers sent to Nabcor an order given to A.C. Chevrolet and not filled, right?

MR. PERSON: Correct.

THE COURT: Now, what was the broker?

MR. PERSON: Turco is the name that I have.

THE COURT: Turco submitted it.

MR. PERSON: Turco ordered and the cancellation is 7/11/67, some indication that the --

THE COURT: How many brokers were involved in submitting orders to Nabcor where they couldn't be filled? How many brokers?

MR. PERSON: Well, from those that are in the log I would have to say fewer than about half of 75 orders involved different brokers. I don't have them tabulated.

THE COURT: Fewer than half. How much fewer than half? Anybody know?

MR. KLEINBARD: Your Honor, one of the difficulties that you have it called cancellation and you don't know who cancelled.

By looking at that log you don't necessarily ascertain there was a refusal to fill the order. It could have been that the broker cancelled for another reason.

MR. KAPLAN: The other point is many of them were dealers as to whom there is no evidence whatever of any connection to General Motors.

THE COURT: But if we know that a certain precise number of orders were placed with a dealer and turned down by the dealer, not turned down by Nabcor or Nabcor's broker or the broker's customer, at least that would be something.

It wouldn't be the end of the line, but that is the crucial piece of information here, and do you know that?

I think I heard last night that you don't know that, Mr. Person.

MR. PERSON: No. We have some instances which I brought in there last night, and I haven't done any additional work on that.

But I have these instances where I know there were refusals, non-delivery of automobiles.

THE COURT: How many refusals by the dealer?

MR. PERSON: A.C. Chevrolet was one. Cerota Chevrolet was one.

Colonial Cadillac was 43. Cunningham Buick, one.

Tom Edwards Chevrolet --

THE COURT: Anybody keeping track of this to get a total?

MR. KLEINBARD: You are going too fast.

THE COURT: Take it slower and take notes.

Q Mr. Maiorana, can you correct me if you have some additional information?

THE COURT: Cerota, was that a refusal to deliver or a refusal to drop ship?

MR. PERSON: Actually it is the hiding of title of Stolarski.

THE COURT: Let's stick right now to refusals to deliver allegedly, refusals by dealers to deliver, cancellations by dealers. Start over again.

A.C. Chevrolet?

MR. PERSON: One car, 8/67, approximately.

Colonial Cadillac --

THE WITNESS: Can I make a correction, your Honor?

THE COURT: Just a minute.

MR. PERSON: Bates Pontiac --

THE COURT: What about Colonial?

MR. PERSON: I noticed there were some orders that were turned down, not delivered in June or July of 1967. I have not -- probably around four or five, approximately.

Q Is that correct, Mr. Maiorana, do you recall?

A I believe so, yes.

THE COURT: The Summer of 1967?

MR. KLEINBARD: On A.C. Chevrolet the pretrial memorandum indicates that it was a refusal to deal, which is different from not filling an order.

THE COURT: Let me get Mr. Person's claim. You are listing specifically refusals to sell.

You listed A.C. Chevrolet, one car, August, 1967.

Then you listed Bates Pontiac, and youare not sure, but you think four or five cars in the early Summer of 1967.

Let us go on to the next. What about Colonial Cadillac?

MR. PERSON: Colonial Cadillac was 43.

THE COURT: When did that occur, late 1966?

MR. PERSON: Or early -- wait. It had to be the end of the year or the first part of 1967.

THE COURT: All right. What else?

MR. PERSON: Cunningham Buick.

THE COURT: How many cars?

MR. PERSON: One car, ordered 9/1968 and refused around 10/3/68.

THE COURT: Fall of 1968. What else?

MR. PERSON: Tom Edwards Chevrolet.

THE COURT: How many cars?

MR. PERSON: A couple of orders were placed and I don't think that we can prove specifically which orders were not --

THE COURT: Were one, two, or none denied by Tom Edwards or don't you know?

THE WITNESS: There were some, your Honor.

THE COURT: You have got to be specific. We spent a lot of time on this case with vague talk, and I want specific information.

MR. PERSON: They refused to deal with our brokers because of the Epstein Pontiac.

THE COURT: I am not talking about that, I want the orders that were given and refused.

MR. PERSON: I don't think that we can --

THE COURT: Take Tom Edwards off here. What else?

MR. PERSON: Krause Oldsmobile.

THE COURT: How many cars?

MR. PERSON: One car.

THE COURT: When?

MR. PERSON: In 11/66.

THE COURT: What else?

MR. PERSON: Kutner Buick.

THE COURT: How many cars?

MR. PERSON: One car.

THE COURT: When?

MR. PERSON: Around 7/18/67.

MR. KLEINBARD: '66 or '67, Mr. Person?

MR. PERSON: '67.

THE COURT: What is the next one?

MR. PERSON: Luby Chevrolet.

THE COURT: HOw many cars?

MR. PERSON: There were two groups of cancellations. I believe the first group that occurred before -- the first three refusals I don't think were refusals -- the first three cancellations I don't think were refusals. I believe the last three were, and they were 12/66.

THE COURT: Next?

MR. PERSON: In the case of Marty Motors we had some Cadillacs that were not received by May, 1969.

THE COURT: Did they refuse to deliver? Did they cancel the orders? How many cars?

Q Can you give me any guidance on that? D you recall?

A Yes. They refused to deliver any Cadillacs.

Q Were any on order which were not received?

A Yes.

THE COURT: How many?

THE WITNESS: I believe when they finally cancelled there were two or three.

THE COURT: We'll put two or three.

When was that?

MR. PERSON: I have 5/69.

THE COURT: Any others?

MR. PERSON: Two orders Pitcarn Olds.

THE COURT: How many cars?

MR. PERSON: Two cars.

THE COURT: When?

MR. PERSON: 11/14/66.

THE COURT: Any others?

MR. PERSON: Placter, Serubo Cadillac.

THE COURT: How many cars?

MR. PERSON: Nine.

THE COURT: When?

MR. PERSON: They were ordered from 11/70 through 4/71.

THE COURT: Any others?

MR. PERSON: Those were all cancelled and not received.

THE COURT: Plaintiffs' Exhibit 40 apparently shows 699 or 700 cars ordered, 640 sales, if I am advised rightly.

MR. PERSON: Some of the purchasers were not -- some of the direct purchasing by locate method I believe were not reflected in the log. They were not orders that had to be processed by any delaying so that some cars are in the Nabcor police books as transactions that were finished by Nabcor which are not in the log. To that extent, that's one reason for a difference.

THE COURT: Difference between what?

MR. PERSON: The number of cars delivered by Nabcor and the log.

MR. KAPLAN: That's where the 645 comes from.

THE COURT: You are telling me the log doesn't show whether they were delivered or not?

MR. PERSON: The locates were effected without any delay. In other words, somebody calls or maintains a locate.

Maybe Mr. Maiorana should tell you if that is true. That's what I suspect has happened.

THE COURT: Are there any other instances of orders given to dealers that were refused according to your claim?

MR. PERSON: Yes.

THE COURT: How many more instances?

MR. PERSON: By the way, I want to add as a footnote to all this that this is not concerning the orders that were received at the outset. I am not talking about orders that were received initially. I am only talking about orders that a dealer had taken. That's another problem --

THE COURT: I am starting with the orders received by Nabcor and I was starting with the 700 orders in the log and I was told, I have been told repeatedly, that that is virtually complete. You are saying that the police book may not be complete, that there may be more.

MR. PERSON: The police book is complete, I think. I tried to bring it up to the point --

THE COURT: I am told that it's virtually complete as far as orders received by Nabcor from its brokers. Then what happens to those if Nabcor went to a dealer with an order and was told by the dealer "We won't even take it"? Of course I'm interested in that.

MR. PERSON: That's another thing. I have not covered that. That's another aspect. There are quite a lot of those.

THE COURT: How many, and what are the ones?

MR. PERSON: When there is a refusal of a dealer to deal at the outset, or if it were the dealer that had been dealing where it refused to go any further --

THE COURT: Am I not correct that the maximum unfilled orders is 55 orders.

MR. PERSON: It has to be higher.

THE COURT: I thoughthte maximum orders received by Nabcor was 700.

MR. PERSON: 700 represents the number of orders that were in the log and accepted by Nabcor. I understand there were orders not accepted by Nabcor because they were unable to complete the orders. Those are not reflected in the log. If those were accepted by Nabcor, and subject to the fact that some of these orders were --

THE COURT: Where are the records of the orders they didn't put in the log?

THE WITNESS: There were no records, your Honor.

THE COURT: No records?

THE WITNESS: We had no records of those orders. When we had a cancellation and a broker told us "I got ten orders and I'm not going to send them in to you if I can get some assurance of getting the car" --

THE COURT: You had a few instances where a broker would say "I have got ten orders," and you would say "You can't get the supplies;" and he says "I'm not going to bother sending them in"?

THE WITNESS: I told him to send it and he's not going to send them in unless he gets the old order also. One of them was the AC Chevolet situation. That was a one-car cancellation. There was more to that. There is more to this than just that one car. That was an act of finality. That was the end of any business with AC Chevrolet.

But orders and brokers that we lost as a result of that particular situation is not reflected in that log.

THE COURT: Where is it reflected?

THE WITNESS: No dealer has a log like that. I never had one in my dealership.

THE COURT: I'm trying to get some specific evidence.

THE WITNESS: There were nine from Ruckle. That was brought out in this court, that was not presented here. There are many instances of more brokers with lost orders, brokers who decide not to send us orders and just quit.

THE COURT: The question is, what is the reason? I'm sure there were a lot of problems with the brokers.

MR. KAPLAN: May I explain?

First of all we have the stipulation on the record not once but twice that the log is a substantially complete record of every order with Nabcor.

We have no more than 700 orders in the log from brokers to Nabcor.

THE COURT: Do we know of any discrepancies in the log? For instance --

MR. KAPLAN: There are discrepancies all through these logs. For example, you may remember there was testimony as to how Rohrer Chevrolet delivered nothing from February to December of '68. There is an invoice buried among all these papers which proves otherwise.

THE COURT: I'm talking --

THE WITNESS: That's not so. Let me see that invoice.

MR. KAPLAN: I'm not addressing you. Contain yourself.

There is an invoice showing that Rohrer delivered a new Chevrolet to Nabcor January 10, 1968. That transaction, which is established by that invoice, appears nowhere in the log, appears nowhere in the police books which Nabcor theoretically kept by virtue of New York State licensing laws. It's Defendants' Exhibit LLLL.

If I could explain --

THE COURT: Is it in the log?

MR. PERSON: Of course.

THE COURT: You and Mr. Kaplan work that out.

Let me ask you about the last nine Ruckle orders that were supposedly sent over to Ruckle and then those Nabcor orders were sent back.

Do they appear in any fashion in the log?

MR. KAPLAN: I am not sure.

The log reflects the orders. The police books show only deliveries of automobiles. They show approximately for the time period we are talking about 645 automobiles were delivered. Some fraction of that 645 is used cars.

I don't know that fraction offhand but we do know what it is. We can get that information. Let's assume for argument sake there was 600 new cars in there. That means that 600 out of the 700 orders that are reflected in Plaintiffs' Exhibit 450, the order log, were delivered.

There are, of course, going to be cases in the auto log where they ordered a car from dealer No. 1 and for some reason didn't get it and re-ordered it from dealer No. 2 and got it. So there is double accounting in the 700 figure.

THE COURT: I guess what youare saying is this: That even some of the orders which were filled may have been involved in some problem with one dealer before itwas resolved with another dealer?

MR. KAPLAN: That's perfectly clear. How many is that, I don't know, but my best estimate right now -- and we'll get all the figures together -- is somewhere on the order of 600 out of 700 were filled; and the 700 figure is probably high because of a certain amount of double accounting.

MR. PERSON: We have with Ruckle Pontiac, for example, in my compilation, eight orders being reflected having been turned over to Bates Pontiac. Bates is another cancellation situation, but of these Ruckle Pontiac, the orders -- 1/18/67; 2/6/67, and so on.

MR. KAPLAN: In answer to your question there appear at least a number of these Pontiac orders--

MR. PERSON: There are eight.

THE COURT: We started this discussion by an evidence question.

I return to the proposition that one primary fact, although it's not the only relevant fact, is what orders were received by Nabcor and what Nabcor did with those orders, whether they placed them, whether they got them or whether there was some problem because of Nabcor's fault, the dealer's fault, but that's primary information. Apparently there are not very good records about those transactions, but at least there are some records and with some work we should be able to get a picture of what I have just talked about.

I say to you, Mr. Person, that this is prime information. When you are talking about refusals to deal, this is prime information. I am not interested and I'm not going to allow the jury to do very much of anything with a lot of generalities like Mr. Maiorana testifying: We got three or four hundred orders in the fall of 1966. Sitting here, to me, that doesn't mean anything. It's a question of specifics, of actual orders received for what cars on what dates, and I would expect that stuff to be documented in some form. That will be the real test of all these generalizations and all these estimates and statements about hundreds of cars and so forth, and refusals to deal. The real question is, what does it boil down to in concrete reality.

It's a long way of saying you have got to get this analyzed.

MR. PERSON: I have it analyzed.

THE COURT: I don't think you have. That's my problem. It is essential for you to be able to tell me absolutely as accurately and as closely as possible the precise amounts of orders received, dates, cars, what brokers they came from, if Nabcor made an order for those cars, instance by instance, what dealer, what happened, did Nabcor get it from that dealer, was it refused, did Nabcor cancel, did Nabcor fail to perform, did the dealer fail to perform, was it given to another dealer, and so forth. That is just prime information.

If you are talking about some general concept of Nabcor's relationships with its brokers, there may be some admissible evidence that Mr. Maiorana can testify about, but we are in danger of getting into a very serious hearsay problem if we just ask generally as to what was your relationship with somebody. Then we may get into hearsay testimony about what this dealer was doing, whether he was performing well or badly and why and so forth.

That just can't be done through one witness sitting here and testifying about a bunch of chit-chat.

MR. EPRSON: Let me ask whether or not in your opinion your ruling on the hearsay applies when matters relate strictly to damages.

THE COURT: Absolutely.

MR. PERSON: In other words, the hearsay is not a question of showing liability? Because in regular cases where you have testimony --

THE COURT: What do you mean,"regular cases"?

MR. PERSON: A case other than this is a regular case, as far as I'm concerned.

In those cases the question of hearsay, when a person goes down and establishes that he had contacts in trying to minimize damages, for example, that is not hearsay under those circumstances.

THE COURT: Just in general what are you trying to bring out now?

MR. PERSON: Insofar as relationships with our brokers, when that's an element of damages. It's difficult to be able to describe the relationships if the hearsay rule applies --

THE COURT: Id on't know of any rule that allows you to recover damages about relations with brokers. Again it's too vague a concept.

MR. PERSON: It's a description of a property right that's involved in this litigation.

THE COURT: I don't know what relations equals property rights. I don't know that relations equals damages.

MR. PERSON: The contract which is our property right with our brokers, that's an issue here, and the application of the hearsay rule in connection with issues relating to damages, I think, is exceptional. I don't see how people can prove damages if you apply a hearsay rule in that case.

THE COURT: Mr. Person, all I can say to you is that these generally watery concepts like relations, when we're dealing with this case and all the tendencies to get away from any kind of facts and get into unprecise areas and so forth, I cannot have testimony along that line.

We sat here last night for a long time. The effort was to try go get some concept of damages in concrete form, and I won't try to repeat last night's conference, but we were talking, and I hope you got the message, or I had hoped that you got the message, that damages have to be proved in terms of concrete things and not in vague things like relationships and hopes and concepts.

MR. PERSON: I didn't really mean that. I wanted to say, for example, I wanted to have testimony concerning the transactions with the brokers that are known to the present witness as a means of being able to describe what the damages were to Nabcor by testimony of somebody that experienced these events that took place.

THE COURT: What's he going to say? "A broker called me and said 'I'm cancelling out because you are not able to furnish me cars'"?

MR. PERSON: Whatever.

THE COURT: Whatever is important. Is that what you are suggesting?

MR. PERSON: In many cases it was that. There are also other things as well.

THE COURT: What other things?

MR. PERSON: Can I take an example with the witness, and just so you can see what the situation would be --

MR. KAPLAN: May I make a suggestion? I would be delighted. Can Mr. Person take an example where we had the broker's deposit? Let's hear this witness' version of what happened with Courtesy Auto Brokers.

THE COURT: What happened with Courtesy?

THE WITNESS: Courtesy Auto Brokers -- what's the name?

MR. PERSON: Peter Cucci and John Dougal.

THE WITNESS: They were brokers of ours in Suffolk County only and they had a customer who they had given a price to who checked with a dealer and found our price to be lower.

The dealer then called the Attorney General, Motor Vehicle Department; he called the Attorney General and the Attorney General sent a telegram or -- I think it was a telegram -- a cease and desist order for them to stop doing business, and they immediately called me, and there was a detective named on there Dave something, an Italian name.

MR. PERSON: Dara.

THE WITNESS: Dara, yes.

I called him and I explained the system to him.

He then said he needed a day or so to investigate the situation. He did investigate the situation. He checked with the Attorney General of Suffolk County and sent a letter to us stating that the system was legal in effect and our brokers did not need a license, they could sell cars; they did establish that our price was lower than the dealers.

However, Cucci and Dougal were scared off by that whole process and ceased doing business.

THE COURT: How did you learn all this? Who told you all this? Were you there on the scene or did you go see them?

Cucci and Dougal called me in a panic that they had --

THE COURT: Did they tell you they were ceasing to do business because they werescared off by the Attorney General proceeding?

THE WITNESS: Yes.

THE COURT: What's in the deposition?

MR. KAPLAN: In the deposition Cucci testified that he received only one new car order while he was a Nabcor franchisee. I'm reading from a summary. He received one new car order while a Nabcor franchisee. The car was delivered with no difficulties and the customer never had any complaints.

In February or March of 1968 a secretary from some office like the DA's came in to price a car. No commitment was made, The next day he got a telephone call from somebody, he thinks, is in the DA's office who was skeptical about whether his business was legal.

Cucci contacted Turco who contacted Mr. Maioriana,according to the Cucci, and he says although the short investigation scared Cucci the problem was straightened out fairly promptly and did not seem to interfere with Cucci's business operations or cause difficulties.

He said he didn't solicit any sales of new cars since '69, a year after the episode with the DA.

THE COURT: When was the episode of the DA?

MR. KAPLAN: February or March of '68. He said he didn't believe he had solicited cars since '69.

THE COURT: He solicited them up to '69?

MR. KAPLAN: The implication is there.

THE COURT: Did Dougal testify?

MR. KAPLAN: He did. I don't have the summary but his testimony is more favorable to our position than Cucci's.

Also at the end he said: Customers occasionally ask questions about servicing and he thinks that may have contributed to the fact that he sold no other cars other than the one -- which by the way was not General Motors -- while he was a Nabcor broker. And that's the only factor he could think of that may have affected his business.

THE COURT: We have to get back to the jury.

I think we have the same question we dealt with before, and that is when we're dealing with facts that occurred within the knowledge of a particular entity, we can not have that proof by hearsay statements of Mr. Maiorana. And the concept of relationship is really not any way to get around that or avoid that.

For Mr. Maiorana to testify that they were scared out of doing business, that's something he's not competent to testify to. They can testify and they have, apparently, in deposition, and the deposition or the testimony of these people, that's the reliable admissible evidence, and Mr. Maiorana's hearsay is not.

It is possible that he can testify that at a certain point a contract was cancelled or he can testify that after a certain point no more orders were received -- there are certain things he can testify to -- but he can't testify that they called him up and said "We quit trying to solicit orders because we were scared off by something," and that, as far as what went on in their bailiwick, has to be admissible evidence. So we'll follow that rule and we will adjourn if we can just confine our recess to five minutes and get back to the jury.

(Recess)

don't know, say you don't know.

THE WITNESS: I am not sure, your Honor.

Q Do you recall how many employees you had about this time?

MR. KLEINBARD: I object to this.

THE COURT: Overruled.

A We had other than marketing men, we had three employees besides ourselves.

Q What was your financial condition at that time?

A It was very poor.

Q Do you know where these inquiries came from? How they were acquired over that two-year period?

A I believe they were mail inquiries.

Q There was some reference to the sale of franchises, some people who became franchisees of the existing Nabcor franchisees.

Do you recall whether Nabcor assisted any Nabcor franchisees in selling franchises?

A Yes. Some of our marketing people were sent to franchisees to assist them.

Q Do you know if Ernest Turco had any franchisees?

A Yes.

Q Do you recall how he got them or got some of them?

A Well, originally we had about some 20 franchisees in the New York area. We made him a master broker and we turned those over to him.

And then we sent one of our marketing men, Bill Nash, to go into New York and to interview people for Mr. Turco and to acquaint franchisees for him.

We also had another marketing individual in the Albany area interview people for that area and did appoint two franchisees in that area for Mr. Turco.

Q In Defendants' Exhibit Z-5 Mr. Kleinbard referred to a line that Nabcor system is not only welcome by part of the rapidly growing auto buying public but by manufacturers as well, since it results in greater sales as a result of Nabcor broker's personal contact and service. And then there are other matters that the jury can read. I will pass it out to the jury.

Can you tell me what you meant by that?

MR. KLEINBARD: Doesn't it speak for itself, your Honor?

THE COURT: Objection sustained.

Q Can you explain what you meant?

THE COURT: What relevance does it have,

MR. PERSON: I would rather have them look at it so they can see an example of the Nabcor sales literature, since its quality is being brought into question.

THE COURT: Just look at it? Pass it around to them.

MR. PERSON: To read or whatever, since if you find anything of interest and then pass it on.

THE COURT: Just hand it to Mr. Person and anything specifically he wants read he will read it to you.

Q Mr. Kleinbard asked about page 23 of Defendants' Exhibit D-6, a question concerning wouldn't the dealers try to stop us. That was raised in the manual.

A They are still reading the document.

Q That is all right, we can proceed.

Can you recall the question raised about that?

A Yes.

Q You had pointed out there was some other information that should be viewed in context with that. What information was that?

A The previous paragraph here, and we made sure that we told the brokers and --

THE COURT: What is the previous paragraph that you say should be read by Mr. Kleinbard? What is it?

THE WITNESS: That the local dealers won't welcome you as a competitor, but thatis the reason and the advantage of a national system, joining a national system, because we informed them they would get --

THE COURT: Why don't you just read the whole thing? This D-6, which was given to master brokers and area brokers?

THE WITNESS: Master brokers and area brokers.

THE COURT: They were trained as to what to say to the prospective brokers, right?

THE WITNESS: Right.

THE COURT: And you were advising them they should answer this question this way, is that right, Question 3, "Won't dealers try to stop us?"

You were advising that they should answer this way, is that right?

THE WITNESS: Is that what I just read?

THE COURT: Right. A proposed answer, right, for these brokers who were thinking of coming with you, right?

THE WITNESS: Yes, they were to be informed the dealers wouldn't like them.

THE COURT: "Mr. Prospective Broker, I am sure that the local dealer won't welcome you as a competitor, but that is the reason and the advantage of joining a national system. Nabcor through its contacts nationally can get you automobiles at all times and the local dealer would never stop you. Should they try, that they would be in direct violation of the Supreme Court decision, and they would not dare attempt this. They could be tried by the government or the criminal prosecutor for restraint of trade. In our four years of operation Nabcor has experienced no difficulty in supplying its brokers with automobiles, nor does it anticipate any difficulty in the future, so there is no reason to worry about that particular point."

Next question.

Q When you wrote this, do you recall what year it was?

A That was in 1969.

Q In 1969 did you hope that the problems of the prior years were behind you?

A Yes.

MR. KLEINBARD: I object.

THE COURT: Sustained, and it is stricken, what he hopes is irrelevant.

Q Can you explain, Mr. Maiorana, what you meant when you said that "In our four years of operation Nabcor has experienced no difficulty in supplying its brokers with automobiles nor does it anticipate any in the future"?

MR. KLEINBARD: It speaks for itself, your Honor.

THE COURT: I will overrule the objection.

2 THE WITNESS: Well, in explaining we had a national system and explaining to the broker that there would be problems with local dealers, they wouldn't welcome him as a competitor, and that is the reason and advantage of having a national system, that we could go 300 miles away or 400 miles away and bring him an automobile in spite of the local dealer trying to stop him.

So we were making him aware of the problems and that the national aspect of our business is that if a group of dealers in one zone banded together and wouldn't supply cars to him, we could supply cars from another area, like we did from Philadelphia to Buffalo.

But we did, you know, insist that they tell any prospective broker that he would be having some problems with local dealers, they would not welcome him, and there was trouble at this time. However, the question --

THE COURT: Can I ask you this --

THE WITNESS: We hadn't had problems locating dealers nationally. This is a national system, 42,000 dealers, and once a dealer stopped us, we could always get another dealer. That is what I meant by that, your Honor. In that book. We could always get a source of supply if it was stopped at one particular place.

THE COURT: I would just be interested in knowing, was it or was it not correct, this quote:

"In our four years of operation Nabcor has experienced no difficulty in supplying its brokers with automobiles."

Now, I am not clear, was that correct or wasn't it correct?

THE WITNESS: It was correct to the extent that we could get other dealers.

THE COURT: I am not asking you to the extent. I am asking you whether that was correct or not correct. It says "no difficulty." So I want you to remember what it says.

My question to you, Mr. Maiorana, is, was it or was it not correct, the statement, "In our four years of operation Nabcor experienced no difficulty in supplying its brokers with automobiles," yes or no. Was it or was it not correct?

THE WITNESS: It is not correct in explaining in the book that we have difficulty.

THE COURT: This statement was not correct?

THE WITNESS: As I read it, the previous part of that, we have problems. No, it is not correct. It says that in the book. It is not correct in the content of what you are putting it in. I think we explained we were having problems with local dealers.

BY MR. PERSON:

Q Mr. Maiorana, do you recall this Defendants' Exhibit Y-5, the qualified leasing company application form and it refers to 250 cars -- may I just read this?

"Number of cars that applicant operates in bona fide leasing and rental service" and filled in is 250.

It lists the names and addresses of any subsidiaries or licensees to be included in this

A Yes.

MR. PERSON: I won't ask the next question.

Q Was there any way in which Nabcor could deal with a franchised dealer and not be reselling cars in competition with that dealer?

A Unless he sold them out of the territory.

THE COURT: It is obvious. It is a possibility.

Q Did you in fact deliver cars outside of the territory of selling dealers?

A Yes.

Q Not all cars, but some cars?

A Yes. I would say most cars were delivered outside of his territory.

Q Did you ever state to any dealer why it would be in their best interests to sell to Nabcor?

A Yes.

Q What did you state?

A I stated that we paid for the automobiles immediately upon delivery, which is something that the leasing companies don't do. They have a deal --

MR. KLEINBARD: I object to that, your Honor. He is not competent to testify.

MR. PERSON: It is to indicate, to show the

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Q Mr. Maiorana, would you please look at this Exhibit 646, and can you tell me from looking at that whether you can recall the date on which this automobile for Mr. Askew was ordered, and ask you if that helps you refresh your memory as to a specific date?

A Yes, it states September 17.

THE COURT: Does it refresh your memory? Do you have a memory of a specific date?

A Yes, I believe I said it was September previously, September, 1968, and the letter states that.

Q Does it refresh your memory as to that date?

A Yes.

Q Do you recall having had a conversation with Matt Slap on or before this letter in May of 1969, whether or not the automobile was going to be coming in?

A Yes.

Q Who did you talk to?

A Allen Goldstein.

MR. KLEINBARD: If you are going into this conversation with Goldstein, I want to make an objection.

THE COURT: Sustained.

MR. PERSON: I would like to point out from the log of Nabcor, page 30062, Exhibit 450, your Honor, that there is an entry at line 4, dated August 9, James Bradwell, 663-2, which is the broker, Mr. Bradwell's broker number, consecutive order No. 568, and it says:

"Corvette, 1969 Corvette," and that is cancelled out and says "Void, see 663-5."

Going down to 663-5, there is a broker number for Mr. Bradwell, 5 is the order number, and September 17, an entry in the log at line 20, on the same page, 30062.

"James Bradwell Chevrolet Corvette, order dated September 17, 1968," and it says "Rohrer Chevrolet," and "Rohrer" is crossed out and beneath that "Slap."

Where it says "Factory dealer located," there is an entry "Slap Motors" and the name Joseph Askew appears under the name of the customer.

I would like to have a side bar on this.

(At the side bar.)

THE COURT: Mr. Person is offering Exhibit 502, which is a letter from McIntyre to Nabcor, dated August, 1968, and I previously sustained the objection because of the inadmissible hearsay. It talks about reasons for this and that.

Now, I will adhere to my previous ruling. However, if there is evidence shown in the log or that Mr. Maiorana remembers that he placed certain orders with Rohrer and those orders were not filled, he can testify to that.

The age-old objection is if Mr. Maiorana tries to testify about the reasons why Rohrer was not filling orders, because either he will have to speculate or give hearsay.

MR. PERSON: Thank you.

(In open court.)

Q Mr. Maiorana, do you recall whether Nabcor attempted to obtain any Corvettes from Rohrer Chevrolet during the Summer or August or September of 1968?

Just answer yes or no, please.

A Yes.

Q No reasons at all. Were automobiles obtained -- did you give any orders to Rohrer Chevrolet for any Corvettes during that period?

A I believe we did, yes.

Q Were you able to obtain any cars, any Corvettes from Rohrer Chevrolet as a result of orders placed during that period?

A No.

MR. KLEINBARD: May we have the number of orders, if possible?

THE COURT: This is just general, I am afraid. If you want to go into it more specifically, you can.

Q Subsequent to learning that, you were unable to obtain one or more orders from Rohrer Chevrolet what dealer did you then turn to, if any, for Corvettes?

A Matt Slap.

Q Is that the time at which the order for the Askew car was placed?

A Yes.

Q Do you recall an A.C. Chevrolet Company?

A Yes.

2 MR. PERSON: I have Exhibit 605.

THE COURT: Are you offering that?

MR. PERSON: Yes.

THE COURT: Any objection?

MR KLEINBARD: Just a second, your Honor.

I object, your Honor.

THE COURT: May I see it?

(Handed to Court.)

that he got two from $50 over invoice.

THE COURT: The thing is that I think it is going to be apparent from this letter as far as the Corvettes that he had to pay more. That is clear on the record.

MR. PERSON: That isn't much more, $200 is low.

THE COURT: The question is, how much more. If you want to ask him to refresh his recollection, but I have to tell you if there is an objection as to authenticity I can't allow it at this point.

But you can certainly get testimony and use it to refresh his recollection.

MR. KLEINBARD: No objection to that, your Honor.

(In open court.)

Q Exhibit 605 is a letter dated March 13, 1967, and strictly to refresh your recollection, would you please take a look at that letter and tell me whether or not at or about that date you were able to obtain a supply of Corvettes from a dealer or did you enter into an agreement with a dealer for Corvettes?

What is your answer, yes or no?

A Yes.

Q Do you recall the price at which the dealer agreed to supply Corvettes to you?

A Yes, $200.

Q What does that mean, $200?

A Over dealer's invoice, what the dealer paid the manufacturer.

MR. PERSON: For the convenience of the jury I would like to substitute the real exhibit for Defendants' Exhibit D-6, since there has been a lot of problems with readability.

MR. KLEINBARD: No objection.

THE COURT: Fine, just substitute it.

MR. PERSON: May I show that to the jury, your Honor?

THE COURT: Sure. Just showing it to glance at it? Not to read the entire contents.

xx (Plaintiffs' Exhibit 648 marked for identification.)

MR. KLEINBARD: As to this exhibit, I have no objection to it for the purpose of showing what Nabcor did. I don't want to concede the truth of the statements.

THE COURT: That is the only reason.

What is 648?

days that you worked?

A I would say it ran around 75 or 80 per dent of the time I worked.

Q Was there any additional salary received by you for the hours over and above what you call the regular hours?

A No, I never received any.

Q Do you know Mr. Hank Thomas?

A I have talked to him, yes.

Q Who is Hank Thomas?

A He is, I believe, a manager of GMAC.

Q In what area?

A In the Philadelphia area.

Q Did you have any conversations with Mr. Thomas?

A Yes, I did.

Q Concerning what?

A Concerning the line from GMAC, to finance a line of cars for rental, daily rental.

Q Do you recall when this conversation occurred?

A It was around the end of 1967 or the early part of 1968.

Q Can you state what Mr. Thomas said to you and what you said to Mr. Thomas?

A Well, he initiated the call to Nabcor and I picked it up because I was the only one there who would handle something like that.

He said that there was an inquiry about a line of credit for rental cars and that he couldn't or GMAC does not and did not work except to its own dealers in financing of automobiles or any lines of credit, and that Nabcor would have to go through a dealer to get this financing or approval of financing.

Q Was there anything else that was said?

A Well, he mentioned about the way they did financing and the paying of the financing back on the cars. It was 2-1/2 per cent per month. That was about it.

Q Subsequent to that did you make any contact with any dealer concerning financing?

A Yes.

Q Who did you communicate with?

A Mr. Sloane at Matt Slap Chevrolet.

Q What did you discuss generally? What was the general subject matter?

A The buying of automobiles from him for rental and the financing of those automobiles through their

GMAC plan that they had.

Q Subsequently did you learn whether or not Nabcor was able to obtain a line of credit?

A I didn't get that.

Q Subsequently did you learn whether or not Nabcor was able to obtain a line of credit for automobiles through either Matt Slap or GMAC?

A Yes. I learned that we weren't able to get it.

MR. KAPLAN: Objection and move to strike everything after "Yes" as hearsay.

THE COURT: Motion denied.

Q Before that conversation with Mr. Thomas that you testified about did you have any discussions with any General Motors employees about anything?

A Previous?

Q Yes. You testified that about the end of December or the beginning of January in 1968, that you had talked with Mr. Thomas.

Prior to that time or at any time did you have any discussions with any General Motors employees concerning Nabcor?

A Just prior to that Mr. Speece and Di Simone were at the Jenkintown office.

Q Did you meet with them?

A Yes.

Q Had you arranged this meeting at all?

A No.

Q How long was this meeting?

A It ran around half an hour or a little less maybe. About half an hour.

Q Did you know that they were coming?

A No.

Q Who was in the office with you, if anybody?

A The receptionist was there. I don't remember which one. Jack Snyder was in the office?

Q Did the three of you have a meeting, Mr. Speece, Mr. DiSimone and yourself?

A Yes.

Q Was anyone else present?

A Not in the same office.

Q Could you tell me what was discussed at the meeting identifying who said what?

A Mr. Speece did most of the talking and he came in and they both sat down and I sat down and we just started a discussion about Nabcor. They were asking questions and I was answering them.

They asked many questions about Nabcor.

MR. KAPLAN: Your Honor, could we have the conversation instead of the summary?

Q Instead of summarizing that questions were asked, try to state what the question was and what your answer was to the question, even though it takes a little bit of time. Try to do it, please.

A I explained to them the entire Nabcor system.

Q Can you state what you said instead of trying to summarize it?

A They asked about the Nabcor system and I said that the Nabcor system was a new system, a new concept, that we had devised to sell automobiles and it was called lease or purchaes or both.

I told them that we put brokers on and that the brokers sold the cars, or if they could lease we had lease forms for them that they could do leasing, but it was mostly sales they were involved in.

They asked where we got the cars and they asked me where I was getting Chevrolets. I said Rohrer Chevrolet.

They said Chevrolets.

THE COURT: What did you answer?

THE WITNESS: Rohrer Chevrolet. At that

time we were getting it from Rohrer Chevrolet.

At the end of the conversation, after I had explained the Nabcor system to them and the advantages, and things like that, then they said to me that we were not qualified to buy cars to resell.

This is in substance what they said: We should not be selling cars, and to be fleet buyers we would have to have 30 cars, and we would have to keep them at least six months registered in the name of the company and used, and we were not allowed to sell them as new automobiles when we bought them.

I told them we had bought more than 30, and they asked if we had purchased that in the name of the company. I said they were registered -- sold and registreed -- in the name of the people.

After that they -- when I say "they," Speece was doing most of the talking -- he said that the dealers would not sell us any automobiles to resell, and they said -- he said that they would see to it that we would not get cars to resell.

Q Can you recall anything else about the conversation?

I have Exhibit 642 in evidence, a Chevrolet fleet plan.

MR. KAPLAN: May we have an answer to the last question?

THE COURT: Do you recall anything else?

THE WITNESS: I can't recall anything offhand.

Q I have Exhibit 642 in evidence, a Chevrolet fleet plan, which was Rohrer Chevrolet's application to General Motors for a fleet rebate on six automobiles sold by Rohrer to Nabcor during the month of November, 1967. This application is dated November 22, 1967. Miss Madden testified about it from Rohrer Cheveolet.

I show it to you and ask this: Did you have any discussion concerning a fleet rebate?

A With whom?

Q With either Mr. Speece or Mr. DiSimone?

A No. Not a fleet rebate for Rohrer. They asked about or they intimated --

THE COURT: I can't hear you.

A They talked about the fleet rebate, and I said that we were not looking for a fleet rebate ourselves, but they never discussed or said that Rohrer was asking for a fleet rebate.

Q Do you recall who brought up the subject matter of fleet rebates?

A They did.

Q Can you recall anything else about the conversation?

A I can't recall anything else.

Q Did you ever talk to either of them again?

A I don't believe I did.

MR. PERSON: No further questions.

MR. KAPLAN: Your Honor, this will take me two or three minutes to get my papers together. Would this be a good time to recess?

THE COURT: Yes.

(Jury out)

MR. KLEINBARD: On Sunday evening, your Honor, you asked us to do some thinking and come up with something. I think we may come up with something in the nature of an application and I wondered when your Honor would have time to hear it, because I would think that on that day you might want to have the jury come in later or leave earlier, whichever you saw fit. It's our planning --

THE COURT: What are you thinking of or are you prepared to say?

MR. KLEINBARD: I think it would be

something in the nature of a motion to dismiss on a variety of grounds.

THE COURT: Let me know when you want to have argument and then I'll work it in. Which day would it be?

MR. KLEINBARD: We more or less would make it any day beginning with Thursday. I suppose one is always overoptimistic about this.

THE COURT: Let me know. We are going to have tomorrow off. Talk to me about this early Thursday.

In the meantime I have gotten the transcript of Sunday night's hearing and I would like to read that. I think there is a mistake or two in there but nothing drastic. It's a good record. I think this is a part of the transcript that should be in your hands. I hope this doesn't violate all the rules of the court reporters: you can order a copy or get it Xeroxed. It's very short. It's crucial. I think you want to go over this and see what questions I put to you and see how you responded and see what information you were lacking at the time. I don't claim it's the end of the story but at least it was a pretty good start.

I would suggest, so we are all on the same ground, that you get this.

MR. KLEIN: Could we have a time on Friday? I think we would be in as good a position on Friday as we are going to be.

THE COURT: I'll give you time on Friday.

MR. KLEINBARD: Thank you.

THE COURT: We'll hear it Friday.

(Recess)

(Jury in box)

CROSS-EXAMINATION

BY MR. KAPLAN:

Q Mr. Maiorana, Nabcor employed people to sell franchises, is that right?

A Yes.

Q Are these the people who have been referred to as marketing men?

A You mean now? That I referred to that?

Q There has been reference in the courtroom during the trial as marketing men. These are the people who sold franchises?

A Yes. I don't know whether you would call the other people that ordered cars for us marketing men also. I would say the franchise men were marketing men.

Q These franchise salesmen, marketing men, they worked on a commission basis, is that right?

A Yes.

Q Nabcor didn't pay them any salary; is that correct?

A That's right.

Q They were paid some percentage of the cost of whatever franchises they sold; is that right?

A Yes.

Q They were paid between 20 and 40 per cent of what the franchises cost; is that correct?

A Yes.

Q Nabcor didn't pay any travel expenses for these franchise salesmen, true?

A They were not supposed to. That's true.

Q It didn't in fact, did it?

A If it paid once or twice, I don't remember. It was not supposed to.

Q It didn't do it as a general rule?

A That's right.

Q Nabcor as a matter of fact didn't pay any of the expenses of any kind for these franchise salesmen, true?

A That's true.

Q Nabcor didn't require these franchise salesmen to run any advertising account?

A No.

Q So whether these franchise salesmen ran advertising or not, that was a matter of his own choice?

A I would say so.

Q Some of them ran advertising and some of them didn't; is that right?

A I would have to guess there. I don't really know what they did.

Q If these franchise salesmen did run advertising they didn't necessarily report that fact to Nabcor; is that right?

A Most of the time, that's right.

Q Are you familiar with the term "call reports"?

Do you know that salesmen in some businesses fill out reports whenever they see a prospect?

A Salesmen in some places?

Q Salesmen in some businesses fill out reports whenever they call on somebody to whom they're trying to sell something.

A Yes.

Q Those are known as call reports.

A Are they?

Q The franchise salesmen that Nabcor had didn't fill out call reports or anything like that; is that true?

A We tried to find out what they were doing --

THE COURT: Answer the question. Did they fill out any systematic reports of their calls?

THE WITNESS: Not systematic, no.

THE COURT: Next question.

Q And the only way Nabcor knew what kind of effort these franchise salesmen were putting in was whether or not they happened to sell a franchise; is that right?

A I would say that's probably right.

Q There was a high turnover among the people who sold franchises for Nabcor; true?

A It depends on what you call high.

Q You regarded the turnover among Nabcor salesmen as high; is that right?

A You are asking me or telling me?

Q I'm asking you.

A I don't know. I don't think we had relative to other businesses higher turnovers. We had a turnover of salesmen.

Q I'll read to you from your deposition of July 15, 1975:

"Q Was there a high turnover among the people who sold franchises for Nabcor?

"A Yes. There is a high turnover in that field."

As a matter of fact, Nabcor didn't have any franchise salesmen who were active selling franchises for as long as a year; is that true?

A I don't know that's true.

Q I read to you from your testimony of July 15, 1975, at page 1356, sworn testimony:

"Q Did Nabcor have any franchise salesmen who were active in selling franchises for more than a year?

"A I'm not sure. I can't answer. I'm not sure if anyone was active for more than a year."

Now, sir, Nabcor never had a plan for where it intended to locate franchises, is that right?

A It had a plan, yes.

Q You never had a plan for how many franchises you intended to have; is that true?

A There was a broker -- the plan was a

broker for every 10,000 people, population.

Q That story is something that was made up for this trial, wasn't it?

MR. PERSON: I object to that.

THE COURT: Overruled.

A Positively not.

Q Mr. Maiorana, I read to you from the transcript of your sworn testimony on July 15, 1975:

"Q When Nabcor was first formed or at some subsequent time did it ever have some plan for where it intended to locate franchises if it could or how many it intended to have?

"A No, except for the fact that we tried to get in areas of population.

"Q Did you ever reach some system as to the number you wanted to have?

"A No. It was never put down as a specific amount. We did not get that far."

When Nabcor first started out it just sold broker franchises, true?

A Yes.

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Q Then some time around 1967 the franchise structure was changed, correct?

A It was changed more than once.

Q It was changed in 1967 for the first time, true?

A I don't recall the exact date.

Q As a matter of fact, in 1967 Nabcor started to sell area broker franchises, correct?

A Yes, some time it did start, that is right.

Q It was 1967, sir?

A It may have been, yes.

Q And subsequently Nabcor started to sell master broker franchises, true?

A Yes.

Q And the area brokers and the master brokers had the right to sell Nabcor franchises to other people, true?

A Yes.

Q That was not true of the broker franchises when you started out, correct?

A Right.

Q The reason that Nabcor started to sell area broker franchises was that it was easier to deal with a single area distributor who would in turn deal with the brokers and deal directly with all the brokers, is that true?

A I didn't hear all of that.

(Question read.)

A Partly true, yes.

Q Partly true?

A Yes. There were other reasons also.

Q There were other reasons?

A Yes.

Q Now, sir, wasn't the reason you started to sell master broker franchises is because it is easier to deal with one master broker than to deal directly with all the area brokers and brokers?

A That is also partly true.

THE COURT: I am not clear. Could a master broker sell area broker franchises?

THE WITNESS: Yes.

THE COURT: He could also sell regular brokerage franchises?

THE WITNESS: Well, if he kept an area for himself he could have some brokers selling for himself as the area broker had 10 brokers to sell for himself.

THE COURT: But also he was supposed to only sell area brokerages?

THE WITNESS: No, not only supposed to. There was a time he could put on all brokers and manage them himself, but it would be kind of wieldly.

THE COURT: Unwieldly?

THE WITNESS: Unwieldly.

THE COURT: There is nothing under the contract preventing him from selling regular brokerages?

THE WITNESS: No.

THE COURT: All right. Could he sell area brokerages?

THE WITNESS: Yes.

BY MR. KAPLAN:

Q At least in part then the reason Nabcor started selling these area brokerage franchises and the master brokerage franchises was to make it easier to handle all of the franchisees that you had, is that right?

A Yes.

Q And you didn't do it in order to get these area brokers and master brokers to sell more franchises necessarily, is that right?

A No.

Q As a matter of fact, Nabcor was not dissatisfied with the number of franchises that its own franchise salesmen sold, true?

A Wasn't dissatisfied with the number?

Q That's right.

A I don't know how to answer that. You are always looking for more business.

Q I will read to you from the transcript of your deposition, July 22, 1975:

"Q Was Nabcor at any time dissatisfied with the number of franchises sold by its franchise salesmen?

"A Not with its franchise salesmen. That is in general, that is.

"Q Was it dissatisfied with the number of franchises that the franchise salesmen sold?

"A No, not in general."

In fact, wasn't the shift to this area brokerage structure purely an effort to handle Nabcor's business more effectively as a business, true?

A That was part of it.

Q Wasn't it all of it, Mr. Maiorana? Wasn't it the only reason?

A No, I wouldn't say the only reason.

Q Wasn't the shift to the master brokerage structure solely an effort to handle the business more effectively? Wasn't that the only reason?

A No, not solely.

Q I read from the transcript of your deposition on July 22, 1975, page 1457:

"Q So the area brokerage structure was purely an effort to handle business more effectively as a group, is that right?

"A Yes.

"Q And that is also true of the master brokerage structure?

"A Yes.

"Q Were there any other reasons for your adoption of either one of those structures?

"A I can't think of any other reason."

MR. PERSON: Your Honor, may I ask if this is really appropriate testimony? Why don't they call him as a witness? It isn't responsive to my direct examination. I think we are going far afield.

MR. KAPLAN: Certainly we could call the man back. I don't know what purpose that would serve. We certainly heard a lot about franchises.

MR. PERSON: He doesn't even have the information, Frank Maiorana --

THE COURT: Wait a minute, you are the one testifying now. He hasn't said he doesn't have the information, and I think at this point this is perfectly appropriate. I wouldn't sustain any objection to this line of questioning.

MR. PERSON: Do they have unlimited opportunity in any area or is there any limitation in the questioning?

MR. KAPLAN: As it happens, Mr. Person, I am going to another subject right away.

THE COURT: just a minute. I would say no so long as it is germane to the case, and I agree with you that it goes beyond the subject, as far as I can see, beyond the subject matter of your examination.

But they have a right to call him as a witness and in effect they are doing that, and this is done all the time in cases and I don't see any problem.

Let's go, Mr. Kaplan.

Q Mr. Maiorana, during the weeks that you have been sitting in the courtroom you have heard some testimony about a General Motors employee named Robert English, have you not?

A Yes.

Q In fact, you heard your brother Frank testify that he told Mr. Belcher in December, 1967, that Mr.

English threatened dealers in Buffalo with cancellation if they sold to Nabcor, true?

A I don't believe I heard that.

Q Were you out of the courtroom?

THE COURT: Look, it is down on the record.

Q Mr. Maiorana, if such a thing had happened, that would have been fairly important in your way of thinking, is that right?

A I am not following you.

Q If somebody had told you in 1967 or at any later time that a General Motors employee named English was threatening the dealers to prevent them from selling to Nabcor, that is something pretty important to you, right?

A Yes.

Q In fact, after your brother Frank returned from seeing Mr. Belcher in 1967, he told you about his conversation with Mr. Belcher, true?

A Yes.

Q As a matter of fact, between 1966 or 1967 and 1975 your brother Frank never so much as mentioned this alleged Englist episode to you, is that right?

A I don't believe that is right.

THE COURT: Could I hear the question and answer, please?

(Record read.)

Q Sir, you never heard about this alleged English episode from Mr. Strimple or Bolling either, did you, prior to 1975?

A I don't recall if I heard it from them.

Q As a matter of fact, Mr. Maiorana, before 1975 you had never heard of Robert English, is that so?

A You asked me, I believe, before and I said that I don't believe it is so.

2 Q I will read to you from your sworn testimony of February 25, 1975:

"Q Have you ever heard the name Bob English?

"A I don't recall.

"Q If I suggested to you that Bob English was someone connected with the Chevrolet zone office of General Motors, would that refresh your recollection?

"A No.

"Q I can't hear you.

"A No."

Mr. Maiorana, I would like to talk for a few minutes about the manner in which Nabcor handled automobile orders.

The consumer ordered a car from a broker, is that right?

A That's right.

Q And at the point where the consumer ordered the car from the broker he filled out a purchase agreement, is that correct?

A Yes.

Q I will show you a document marked as Defendants' Exhibit K-6 for identification, and I will ask you if this isn't the standard form of purchase agreement that Nabcor and its brokers used?

A Yes.

Q That is the form which the customer filled out when he ordered a car from the broker, is that right?

A No, the broker filled it out.

Q When the customer ordered the car from him, is that right?

A Yes.

Q The customer then signed it somewhere, is that true?

A Yes.

Q He agreed to buy the car?

A Yes.

MR. KAPLAN: I offer it, your Honor.

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit K-6 received in evidence.)

Q After a form such as Defendants' Exhibit K6 was made out by the broker and the customer the broker then sent the purchase agreement, the form, on to Nabcor; is that right?

A Yes.

Q And at the time when the broker sent the purchase agreement for the order to Nabcor the broker was supposed to send a deposit to Nabcor; is that right?

A Yes.

Q And then only after Nabcor received the purchase agreement and the deposit it would then order a car from a dealer to fill the order?

A Not always.

Q Most of the time; is that right?

A Yes.

Q As a matter of fact, you can't think of a couple of cases when that was not so, is that right?

A I don't remember. I didn't get them all.

THE COURT: Was the customer supposed to give a deposit to the b roker and the broker was supposed to forward the deposit to Nabcor?

THE WITNESS: Yes.

THE COURT: Proceed.

Q As an ordinary matter, Nabcor did not order a car from a dealer until it had the customer's deposit?

A Normally, yes.

Q When Nabcor received a deposit from a customer for a new car order it issued a receipt to the customer; is that true?

A No. To the broker.

Q But it issued a receipt when the deposit came in, be it to the broker or the customer?

A Yes.

Q Nabcor had receipt books in which it kept carbon copies of all the receipts it issued; is that right?

A Yes.

MR. KAPLAN: Mr. Person, I previously subpoenaed those receipt books and I ask you to produce them now.

MR. PERSON: I have been carrying them here for all but the past couple of days.

Q After Nabcor ordered the car from a dealer there would come a time when the dealer would let you know that the car arrived; is that true?

A Yes.

Q And it would be at that point that the customer would pay the balance due on the car in excess of the deposit, right?

A Yes.

Q And then Nabcor would pay the dealer for the car when it went to pick up the car, true?

A Right.

Q And then ordinarily one of Nabcor's brokers would pick up the car from the dealer and drive it to the customer, true?

A Yes.

Q There were occasions where Nabcor ordered the car from a dealer far away from where the broker was, true?

A That's right.

Q And sometimes Nabcor in circumstances like that would try to arrange to have the car drop shipped to a dealer closer to the broker, right?

A Yes.

Q In those cases you would ask the dealer through whom Nabcor ordered the car to ask General Motors to ship it to a dealer near the broker, true?

A I don't know the mechanics of what the dealer did. We asked the dealer to drop ship it for us.

Q In fact, as far as you know, General Motors never refused to drop ship a single automobile ordered by Nabcor, true?

A Repeat that. I didn't follow that.

(Record read)

A To me personally, no. They didn't drop ship a Corvette.

Q That's the Stolarski Corvette involving Cerota Chevrolet that you are referring to?

A Yes.

Q I'll read to you from the transcript of your deposition on page 27, 1973:

"Q So you would ask the Pennsylvania dealer to pass on the order with the request that says GM or Ford drop ship the car or ship the car not to a dealer in Pennsylvania but to a dealer in West Virginia?

"A Right.

"Q And does the factory do that?

"A When you say does it -- you mean normally?

"Q Normally.

"A Yes.

"Q Does GM do that normally?

"A Yes.

"Q Do you know of any situation where GM has refused to do that?

"A It has not been done with us.

"Q That is it has not been done with Nabcor?

"A That's right."

A What has not been done?

MR. KAPLAN: I think the record speaks for itself.

Q I think we established a few minutes ago that after your brother met with Mr. Belcher he told you what happened, true?

A I don't recall the incident of him telling me what happened. We always talked about things in the office that had happened, many, many things.

Q He told you about the discussion he had with Mr. Belcher, did he not?

A Yes, he did.

Q He told you that he had discussed the fleet certificate with Mr. Belcher, true?

A I don't recall the discussion with Mr. Belcher.

Q I read to you from the transcript of your testimony at the preliminary hearing on this matter on October 7, 1976:

"Q Were you aware of all the discussions that took place between Mr. Maiorana and Mr. Belcher?

"A I was aware that he was discussing our problem with Mr. Belcher, yes. I was also aware that Belcher supposedly tried to do something and had referred him to people. I am aware that they discussed that possibly a fleet certificate would solve the problems."

A I was aware of it. You said: Did you discuss it?

Q Let's not argue that.

You were not at the meeting with Mr. Belcher, right?

A That's right.

Q Your brother was?

A Yes.

Q Whatever vou know about what happened at that meeitng was what your brother told you; is that right?

A Yes, but I was aware of it. We didn't sit and make a discussion of it. I didn't ask him everything.

Q Mr. Maiorana, did your brother Frank tell you that Mr. Belcher suggested that Nabcor's problems might be solved by getting Nabcor a fleet certificate?

A Did he tell me?

Q Did he tell you that the fleet certificate was Belcher's suggestion?

A I was aware of it.

Q Did he tell you that?

A I was aware of it. I don't know at what point he told me. There was a discussion. I was aware of it in substance.

Q You were aware that the fleet certificate was Belcher's idea, is that right?

A I was aware that Belcher had told him about a fleet certificate; I was aware that he was discussing that with him. I don't know the meeting, the intricacies of the meeting.

Q Were you aware that Belcher suggested the fleet certificate to your brother or were you aware that your brother suggested the fleet certificate to Mr. Belcher?

A No, I don't recall which way it went.

Q Mr. Maiorana, did you in fact know that the story about the fleet certificate being Belcher's idea was another concoction for this trial; is that right?

A That's not right.

Q I read to you from the transcript of your deposition conducted on February 27, 1975:

"Q Did your brother Frank tell you that he and Mr. Belcher of General Motors discussed Nabcor buying cars for the rental business?

"A I don't recall him telling me that in exactly the way you put it.

"Q Did he tell it to you in some other way?

"A Yes.

"Q And how did he tell it to you?

"A He said that he spoke to Belcher about alleviating a problem that was coming up and they discussed or he discussed or suggested to Belcher a way of avoiding the problem and that could have been by issuing a fleet certificate so that we could buy cars from the dealers so that they would know we had sanction fromthe factory to be able to buy cars from the dealers."

Now, sir, your attack of loss of memory as to who suggested the fleet certificate came about because you heard your brother Frank say it was Belcher's suggestion two dozen times in the last 30 days?

A No.

MR. PERSON: Really, your Honor, their own documents show what it was.

THE COURT: You can't do that, Mr. Kaplan. Ask him the questions but don't argue.

Q Mr. Maiorana, when Nabcor was in the automobile business, it was Nabcor's practice to establish a regular source of supply for each make of automobile, true?

A Yes.

Q One of the advantages that Nabcor held out to dealers was that Nabcor could buy a larg volume of cars?

A What did you say? One of the advantages?

Q You told dealers when you were trying to get them to sell you, you were going to buy in large volume, true?

A Yes. We told them that.

Q One of the reasons you established a regular source for each make was so that each of your volume of each make could go through one or two dealers,

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right?

A All of the volume?

Q Yes. Or most of the volume.

A That we had a time, you mean?

Q Yes.

A Yes. The volume that we had.

Q If you had ten or fifteen dealers from whom you bought Chevrolets,you could not offer each of them as much volume as if you had one or two, right?

A In other words, as we got brokers we got dealers to supply the brokers, not the anticipated buying but the volume we had. We never got a dealer and promised 200 cars without having the brokers first.

Q You tried to concentrate your purchasing through one or two dealers for each line of automobiles?

A Yes.

Q One of the reasons was that you were trying to offer the dealer the prospect of volume sales to Nabcor?

A Yes.

Q Once you established a particular dealer as a source for a particular make of car, for example Chevrolets, you would order pretty much all the

Chevrolets you needed from that dealer, right?

A Yes. Matt Slap didn't ask for 200 cars.

MR. KAPLAN: I move to strike that.

THE COURT: Yes.

Mr. Kaplan is asking general questions.

Q You didn't go out looking for a new dealer any time you wanted to order a Chevrolet, right?

A No.

Q I would like to talk for a few minutes about Nabcor's ability to get Oldsmobiles. Now I refer to Plaintiffs' Exhibit 450 in evidence.

Plaintiffs' Exhibit 450 in evidence shows that in the first eight months of 1967 there were only four orders for Oldsmobiles submitted to Nabcor.

The first was in Februray, 1967, and at page 30042, line 34, the log indicates that that Oldsmobile was delivered to Nabcor by Rosenstock Oldsmobile on April 4, 1967.

The second Oldsmobile ordered, reflected in Plaintiffs' Exhibit 450 by Nabcor in 1967 appears at page 30044 and 45 at line 24 and it was ordered from Rosenstock Automobile, according to this log and the notation DEL in the column indicateing delivered.

The third order came in May --

THE COURT: When wasthe second order?

MR. KAPLAN: The second order is entered March 31, 1967. And there is an entry ordered from dealer March '67 and a notation that it was delivered without date.

The third Oldsmobile order in 1967 appears at page 30046, line No. 14, and it indicates that it was ordered from Rosenstock Oldsmobile on May 15, the order having come in on May 10, and there is no notation as to delivery or cancellation, just no indication whatever.

The fourth order in 1967 appears at page 30048, line 15, under the date of July 6, 1967. There is no entry there with respect to where it was ordered or what happened to it.

Q I show you Defendants' Exhibit S5 for identification. I ask you, Mr. Maiorana, whether that's a copy of a deal folder which Nabcor maintained.

A Yes.

MR. KAPLAN: I offer it in evidence.

THE COURT: Any objection?

MR. PERSON: No, your Honor.

THE COURT: It will be received.

(Defendants' Exhibit S5 was received in evidence)

Q Mr. Maiorana, the deal folders were manila envelopes of which page 1 of Defendants' Exhibit S5 is a copy, correct?

A Yes.

Q Page 1 of Exhibit S5 is a copy of the front page of the manila envelope, right?

A Yes.

Q And the balance, the contents?

A I don't know if this is all the contents in there.

Q Ad a general matter you put in the manila envelope all of the documents that pertained to a particular car order, right?

A Yes.

Q And that would be the car order that is reflected on the face of the manila envelope, true?

THE COURT: Where do we go from here?

Q The fourth Oldsmobile order about which I speak a few moments ago which had no entry as to a dealer in the log does at line 15 at page 30048 contain a number 10576. You had something in Nabcor called a SAPO number?

A Yes.

Q That was the number of the Nabcor purchase orders, right?

A Yes.

MR. KAPLAN: Ladies and gentlemen of the jury, I invite your testimony to the fourth page of Defendants' Exhibit S5 in evidence. There appears there a purchase order bearing the number 10576, the same number that appears for the Oldsmobile in the log.

Then if you will turn to the fourth from the last page of Exhibit S5 there appears an invoice showing that Olds Community Inc. of Riverton, New Jersey, sold to the Nabcor Leasing Company an Oldsmobile on July 25, 1968.

So the fourth order in 1967 was filled by Olds Community Inc. in Riverton, New Jersey.

Q Now, sir, in Plaintiffs' Exhibit 450 -- and fortunately we are about to leave Plaintiffs' Exhibit 450 for other territory -- at 30050, line 31, there appears the fifth Oldsmobile order received in the year 1967 at line 31. That's for an Oldsmobile Cutlass and the log shows it was ordered from a dealer called Marty Motors and delivered on December 5, 1967.

Mr. Maiorana, Marty Motors is a Cadillac Oldsmobile dealer in Westchester County, New York.

THE COURT: There were a total of five Oldsmobiles ordered in 1967.

MR. KAPLAN: Up to this date we are up to five.

(Record read)

A Yes.

Q And starting in the fall of 1967, sir, Marty Motors became a regular source of Oldsmobiles to Nabcor; is that right?

A I don't recall him being a regular source. It was a source, yes.

MR. KAPLAN: Your Honor, I offer in evidence Defendants' Exhibit F for identification which is a tabulation from Nabcor's police books of new automobiles obtained from General Motors dealers in the New York area through December 10, 1970.

MR. PERSON: This is fromt he police books?

MR. KAPLAN: Yes.

MR. PERSON: No objection.

THE COURT: All right, it will be received.

xx

(Defendants' Exhibit F was received in evidence)

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MR. KAPLAN: Ladies and gentlemen, if you turn to page 3 of Defendants' Exhibit F in evidence, you note that Nabcor began purchasing Oldsmobiles from Marty Motors in November of 1967, on the fourth or fifth transaction down from the top.

If you look through the balance of this exhibit you will see that all of the remaining Oldsmobiles reflected on it through May 21, 1970, were all bought from Marty Motors.

Q Mr. Maiorana, Marty Motors never refused to sell Nabcor any Oldsmobiles, true?

A I don't recall personally that they refused me. I don't know. This was a New York dealer and I was in the Philadelphia office.

Q As far as you know, that dealer never refused to sell Nabcor Oldsmobiles, right?

A That is a qualified yes.

Q Qualified by what, sir?

A By other things that I would like to say.

Q As far as you know, you never ordered a single Oldsmobile from that dealer that you didn't get, is that right?

A I don't recall that we ordered one and didn't get an Oldsmobile from them.

Q In fact, Defendants' Exhibit F shows Nabcor got Oldsmobiles from July, 1967, through at least May of 1970, from that dealer?

THE COURT: July, 1967?

MR. KAPLAN: A little bit later than July, your Honor. It is November.

Q As a matter of fact, Mr. Maiorana, from the beginning of 1967 until the end of 1970, Narcor had dealers who were willing to sell every Oldsmobile ever wanted, isn't that true?

A Nabcor had dealers that wanted to sell?

Q Had dealers who would provide any Oldsmobile you ordered for the entire period January 1, 1967, to the end of 1970; isn't that true?

A I don't know; maybe.

Q Well, let's talk about Buicks. In 1966 you approached a dealer Cutner Buick in Philadelphia to get new cars, true?

A Yes.

Q I show you a document marked Defendants' Exhibit G-5 for identification. That, sir, is a letter Nabcor received in or about July, 1966, from Cutner Buick, true?

A Yes.

MR. KAPLAN: I offer it.

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit G-5 received in evidence.)

Q Starting some time in the middle of 1966, sir, Nabcor began to order cars from Cutner Buick, is that right?

A I believe so.

MR. KAPLAN: I would like to distribute to the jury Defendants' Exhibit J in evidence.

THE COURT: All right. What is J?

MR. KAPLAN: A list of automobiles derived from Nabcor's police books.

THE COURT: Is that in evidence?

MR. KAPLAN: It is in evidence, I believe, your Honor -- it is in evidence.

Ladies and gentlemen, you will observe on the first page of Defendants' Exhibit J the third Buick -- or the first Buick listed is August, 1966, a sale of a Buick to Nabcor by Cutner Buick, and you see a number of other sales by Cutner to Nabcor through the rest of 1966, and into 1967 on the second page.

I believe the last one is June 26, 1967.

Q Mr. Maiorana, Cutner was a regular source of Buicks for Nabcor for some period, is that right?

A It was one of the sources.

Q One of the sources you would term a regular source, right? One of these dealers you were concentrating your volume in?

A I believe we were also doing business with other dealers while doing business with Cutner.

Q But you were doing business with Cutner for a while?

A Also.

Q All right. Cutner Buick never refused to sell a car to Nabcor, did it?

A Yes, the last car.

Q I read you from your sworn testimony on May 30, 1975:

"Q Nabcor bought cars from Cutner on a regular basis for some period of time, is that right?

"A Yes.

"Q Did there come a time when Cutner refused to sell to Nabcor?

"A Not that I can remember, no.

"Q Did there come a time when Nabcor stopped buying from Cutner?

"A Yes."

The last Buick Nabcor bought from Cutner was a 1967 model, in June of 1967, true? Page 2 of Exhibit J.

MR. KAPLAN: Actually the exhibit speaks for itself.

THE COURT: June 26, 1967, all right.

Q Mr. Maiorana, the automobile model year ends some time over the Summer, is that right?

A Yes.

Q In other words, the factory stops making 1967 Buicks some time in the Summer of 1967, true?

A I guess. I don't recall that year, but normally some time in the Summer.

Q The new models come out in the Fall?

A Yes.

Q So the 1968 Buicks came out in September or October or thereabouts of 1967, true?

A I guess they are. I don't recall in that year what month they came out.

Q Nabcor continued to order new 1968 Buicks from Cutner Buick, true?

A I don't know. I don't have the exhibit.

Q Plaintiffs' Exhibit 450, page 30050, shows a number of orders for 1968 Buicks to Cutner?

MR. PERSON: I object to that statement because it is strictly the sales, I think. Isn't that only a compilation of sales?

THE COURT: Did they order from Cutner in the Fall of 1968?

MR. PERSON: Let me check the document. Which document are you referring to?

MR. KAPLAN: Page 50.

THE COURT: We will take Mr. Kaplan's representation tentatively unless corrected by you.

MR. KAPLAN: I am saying that Nabcor ordered no 1968 Buicks from Cutner Buick.

THE COURT: According to Exhibit 50?

MR. KAPLAN: Yes, sir.

THE COURT: Go ahead.

Q Mr. Maiorana, Nabcor started buying 1968 Buicks from two other dealers, true?

A I said there was other dealers.

Q As a matter of fact, you started doing business on 1968 models with Bell Buick in Philadelphia and Bano Buick in Mount Kisco, New York, true?

A If we have it there it must have been

true.

MR. KAPLAN: Indeed, I call the attention of the jury to Defendants' Exhibit J, which shows that starting in December, 1967, which is the first 1968 Buick reflected on that exhibit, the purchase was from Bell Buick and there appear thereafter a number of other purchases of 1968 Buicks from Bell Buick.

THE COURT: Just a second. On Exhibit J?

MR. KAPLAN: Page 3 of Defendants' Exhibit J. The first transaction for a 1968 Buick on Defendants' Exhibit J is December 14, 1967, with Bell Buick in Philadelphia, and there appear further down the page additional purchases of 1968 Buicks from that dealer.

I would also invite the attention of the jury to Defendants' Exhibit F, which relates to the New York area dealers, and if you will turn to page 3, four lines from the top, you will see that the first 1968 Buick which appears there was bought from Bano Buick, Mount Kisco, New York, November 4, 1967.

There appear a number of additional Buicks purchased down this page and the next running down to October 9, 1970, from Bano Buick.

MR. PERSON: Your Honor, I have a couple of entries in the log for 1968 Buicks that say Buick, no dealer.

2 MR. KAPLAN: That doesn't prove they weren't from Cutner.

THE COURT: You can ask him.

MR. PERSON: I object to the characterization of the log, which I find some examples where at that time for this model it indicates no dealer.

THE COURT: What were the dates of those?

MR. PERSON: Date order July 11, 1967,page 48 of the log, log No. 19.

THE COURT: What model Buick was ordered?

MR. PERSON: A Buick Skylark 1967, cancelled 7/11/67.

THE COURT: And the second?

MR. PERSON: Page 45, line 1, Buick La Sabre, I believe, November 2, 1967, delivered 12/13/67.

THE COURT: Where was it delivered from? We will defer that. You can go into that on redirect examination or bring it out a little later.

Q Mr. Maiorana, Nabcor continued to buy Buicks at Bano Buick from late 1967 until the Summer of 1970, isn't that right?

A According to this sheet Bano was in New York --

THE COURT: Just a minute, you will have to speak up.

A (Continuing) Bano was in New York and I was in Philadelphia, so I have to go by the sheet.

MR. KAPLAN: The exhibit so reflects.

Q Now, sir, the last transaction with Bano reflected on Defendants' Exhibit F is in October, and that was Mr. Turco, and the next preceding one in July, 1970.

Now, sir, July is around the end of the 1970 model year, right?

A Yes. I guess that year it was.

Q In fact in 1970 the United Auto Workers struck General Motors, is that right? Do you recall that?

A I don't recall it.

MR. KAPLAN: I would offer Defendants' Exhibit W-5 for identification, which is a stipulation of facts entered into by counsel.

THE COURT: Received.

xx (Defendants' Exhibit W-5 received in evidence.)

MR. KAPLAN: On September 15, 1970, the

auto workers struck General Motors and General Motors stopped producing cars in the United States on September 15, 1970, and there was no collective bargaining agreement reached until November 20 and after it there was no production of automobiles in the interim between September 10 and November 20 and General Motors did not resume full production in the United States until after December 1st, 1970.

Q Mr. Maiorana, as far as you know Bano Buick didn't refuse to sell any Buick to Nabcor at any time from 1967 through the end of 1970, true?

A I personally don't -- wasn't --

Q You weren't aware of any?

A Aware of it.

Q You bought Buicks from Bell Buick from the end of 1967 to the Spring of 1968, true?

A I didn't deal with Bell Buick. This letter from Cutner is not to me, but to --

THE COURT: Let's have the last question and listen to it and answer it.

(Question read.)

A I don't recall.

Q You were in Philadelphia, weren't you, Mr. Maiorana?

A Yes, I was in Philadelphia.

Q Nabcor has a Jenkintown office?

A That is right.

Q That is the office where they order cars from the Philadelphia area dealers, right?

A They, right.

Q Nabcor?

A Right.

Q Nabcor orders from the Philadelphia dealers through your office?

A But I am not Nabcor myself.

Q You don't claim that Bell ever refused to sell a car to Nabcor, isn't that right?

A No, I don't recall talking to anyone at Bell. This might have been William Nash. I don't know who talked with Bell.

Q In fact, in the Spring of 1968 Bell sold out its dealership to Foy Buick, right?

THE COURT: Spring of 1968?

MR. KAPLAN: Right.

A I recall Foy.

Q Foy took over the same premises Bell was in, right?

A If it was Bell previous to that, yes.

THE COURT: You have got to speak louder.

A (Continuing) I said if it was Bell previous to Foy, yes.

MR. KAPLAN: Ladies and gentlemen, if you look at page 4 of Defendants' Exhibit J in evidence, about two-thirds of the way down the page, you will see that beginning in July of 1968 Nabcor started buying Buicks from Foy Buick, and that continued right through July of 1970, the last page of Exhibit J.

Q Mr. Maiorana, between the time Nabcor began buying from Foy Buick 1968 and through the end of 1970, Foy never refused to sell an automobile to Nabcor, is that so?

A I believe we bought in 1971.

Q Can I have the answer again?

THE COURT: He said they bought in 1971.

Q You bought until 1971. There was no refusal in the intervening period, is that right?

A Not before the last incident, yes.

Q This last incident you refer to was in 1971?

A Yes.

Q So from 1968 until 1971 you could get all the Buicks you wanted from Foy Buick, right?

A Well, as I recall, whatever we ordered or whatever was ordered -- I didn't order all of them -- it wasn't my communication a lot of time. That was Jack Snyder that actually did a lot of business with Foy.

Q You are not aware of so much as a single order that Foy Buick refused to fill for Nabcor from 1968 until some time in 1971, true?

A I am not aware, yes.

Q Let us talk about Chevrolets.

In 1976 Nabcor began to buy Chevrolets from Matt Slap -- 1966, pardon me?

A Yes.

MR. KAPLAN: At this time I would like to offer, your Honor, Defendants' Exhibit Q-5 for identification.

MR. PERSON: No objection.

THE COURT: Q-5 is received.

xx (Defendants' Exhibit Q-5 received in evidence.)

MR. KAPLAN: That is a letter dated December 9, 1966, from Matt Slap Chevrolet to Nabcor offering to sell automobiles to Nabcor, Chevrolets.

Q Now, sir, Plaintiffs' Exhibit 450 in evidence, at page 30041, line 11, shows the first order to Matt Slap Chevrolet on December 21, 1966.

Mr. Maiorana, Nabcor continued to buy new Chevrolets from Matt Slap on a regular basis to the end of August, 1967, true?

A It may be. This letter was sent to John --

Q Nabcor started to buy from Matt Slap in 1966, true?

A I guess. I don't have the log in front of me.

Q You don't deny that?

MR. KAPLAN: Ladies and gentlemen, if you look at Defendants' Exhibit J in evidence --

THE COURT: You said the first order from Matt Slap was when?

MR. KAPLAN: December 21, 1966.

If you look at Defendants' Exhibit J in evidence, ladies and gentlemen, you will see that starting January, 1967, all or almost all of the Chevrolets Nabcor ordered came from Matt Slap right through August 17, 1967, and thereafter there are some scattered Chevrolets bought from Matt Slap.

Q Mr. Maiorana, Matt Slap never refused to sell an automobile to Nabcor, true?

A I don't recall them not wanting to sell automobiles to Nabcor until the Corvette incident.

Q They never refused to sell so much as one car to Nabcor, true?

A Up until the Corvette incident.

Q I would like to read from your deposition of July 15, 1975, page 1290:

"Q Did Matt Slap ever refuse to sell cars to Nabcor?

"A No, I don't recall refusal, no. I personally don't recall it.

"Q Do you have any information to the effect that there was a refusal by Matt Slap to sell cars to Nabcor?

"A No, I don't recall Jack Snyder telling me that Matt Slap refused, I don't know."

Now, sir, there did come a time when Nabcor stopped buying Chevrolets from Matt Slap at least as a regular matter, true?

A Yes.

3 Q And that occurred, you had a man named Jack Snyder working for Nabcor, true?

A What time was this that you are referring to?

8

Q When you stopped buying from them regularly.

A What time was that?

Q The time was about August of '67, was it not?

A As a regular source?

Q Yes.

(Pause)

A It's possible. I don't recall ever completely leaving Matt Slap.

Q I didn't ask you about that. I asked you whether it is not a fact in and around August of '67 you stopped buying from them as a regular source?

A I didn't say it was a regular source, the only source, at any time.

MR. KAPLAN: Ladies and gentlemen of the jury, Defendants' Exhibit J, once again at page 1 and 2, shows that almost all the Chevrolets from January of '67 to August of '67 came from Matt Slap.

THE COURT: This is the Philadelphia area?

MR. KAPLAN: Of course.

And that after August of 1967 most of them came from Rohrer Chevrolet, and there is a scattering from Matt Slap.

Q In August of '67 you had a man named Jack

Snyder working for Nabcor, true?

A Right.

Q As a matter of fact, sir, the reason that Nabcor stopped buying Chevrolets, at least regularly, from Matt Slap at that time was because Mr. Snyder had some kind of problem or dispute with someone at Matt Slap Chevrolet, true?

A I don't know. Could be.

Q Whatever the problem was with Matt Slap at that time it had nothing to do with General Motors, right?

A No. Whatever problem there was, there was.
I continued to talk to Sloane at Matt Slap.
If Jack Snyder didn't buy there or put regular orders there, I don't know whether he did or not. All I know is that I continued my relationship with Sloane.

THE COURT: The question was whether the dispute had anything to do with General Motors.
I don't think you really answered that.

Read the question.

(Record read)

A The dispute with General Motors was over the Corvette. That's the dispute that we had with Matt Slap. Aside from that we had no dispute with

Slap Chevrolet.

Q I read to you from the transcript of your deposition on February 25, 1975, starting at page 530, line 16:

"A We stopped doing, not stopped doing business, Jack Snyder didn't pursue buying cars. We were buying quite a number of cars from Matt Slap. Jack Snyder didn't pursue it once he got in and he got different sources. He was having a problem with the manager or the assistant manager or something.

"Q What kind of problem?

"A Something that was, didn't have anything to do with the business. He said that he had to check his figures all the time and the man was not quite honest with him or something.

"Q It was not a problem that had anything to do with General Motors, is that right?

"A No."

Now, sir, as a matter of fact, in January of '68 you received a letter from Matt Slap Chevrolet, true?

A Yes, sir.

Q I show you Defendants' Exhibit KKK for identification. I ask you if that is not a letter that you received from Matt Slap Chevrolet on or about January 31, 1968?

A Yes.

MR. KAPLAN: I offer it, your Honor.

MR. PERSON: No objection.

THE COURT: It will be received.

xx (Defendants' Exhibit KKK was received in evidence)

MR. KAPLAN: I will give the jury a moment to read that.

(Pause)

Q Mr. Maiorana, in the summer or early fall of 1967, even before Nabcor stopped getting Chevrolets from Matt Slap, Nabcor arranged to buy Chevrolets, new Chevrolets, from Rohrer Chevrolet in Camden, true?

A Yes.

We were discussing about what Jack Snyder did. Is that what you are discussing?

Q In the summer or early fall of '67 you started to buy new Chevrolets from Rohrer?

A Jack Snyder arranged that, yes.

MR. KAPLAN: I read to the jury Plaintiffs' Exhibit 501 in evidence.

(Mr. Kaplan read to the jury from Plaintiffs'

Exhibit 501 in evidence)

Q Starting in September or October of 1967 you began ordering Chevrolets from Rohrer, right?

A If you have orders there, yes.

Q There is no doubt in your mind that you started getting Chevrolets from Rohrer, is there?

A We started getting Chevrolets from Rohrer but you are giving me a date so I want to look it up.

Q All right.

Plaintiffs' Exhibit 450 reflects that the orders started in September of October of 1967 and that they were for 1968 Chevrolets.

MR. PERSON: I'll stipulate it was September.

MR. KAPLAN: Fine.

Q Prior to October of '67 or September of '67 Nabcor in fact was able to get whatever Chevrolets it wanted from Matt Slap, true?

A Yes. It was able to get Chevrolets from Matt Slap.

Q Whatever you asked for you were able to get from Slap?

A Except the Corvette.

Q Your deposition on July 15, 1975, page 1293:

"Q Prior to October of 1967 was Nabcor able to get whatever Chevrolets it wanted from Matt Slap without difficulty?

"A As I recall, we got whatever we wanted."

Now, sir, in November of 1967 Rohrer began delivering new Chevrolets, 1968 Chevrolets, to Nabcor.

A I guess so. I don't have the sheet in front of me.

MR. KAPLAN: Ladies and gentlemen of the jury, you have seen Defendants' Exhibit D7 when Miss Madden was on the stand from Rohrer Chevrolet. It's a long tabulation. Between August of '67 and July 29 of 1970 Rohrer Chevrolet delivered 95 new Chevrolets to Nabcor. The testimony was that there was a car they bought from Rohrer before they started, August 28, and the first invoice to Nabcor where Rohrer agreed to sell his dated November 1, 1967. From there on there are a total of 94, 95 new Chevrolets.

THE COURT: To what date?

MR. KAPLAN: November 1, 1967 to July 29, 1970, Rohrer sold them 94 new Chevrolets.

THE COURT: The other was the locate?

MR. KAPLAN: Yes, in August of '67.

THE COURT: Proceed.

Q You mentioned a man named Bob Sloane a few minutes ago. He was at Matt Slap Chevrolet in the late '60s, true?

A Yes.

Q He was Matt Slap's son-in-law?

A Yes.

Q And in September of 1970 he got his own dealership, true?

A I don't recall the date. He got his own dealership, yes.

Q That was called Sloane Chevrolet, right?

A Yes.

THE COURT: What was that date?

MR. KAPLAN: September, 1970.

Q When Bob Sloane opened Sloane Chevrolet Nabcor began to buy Chevrolets from him; is that right?

A Yes.

Q And Sloane Chevrolet never refused to sell a car to Nabcor, true?

A Not that I can recall, no.

Q Let's see where we are. From December of 1966 to October of 1967 Nabcor got all the new Chevrolets it wanted from Matt Slap Chevrolet, right?

A I'm losing the dates.

Q From December of 1966 until --

THE COURT: Isn't this in the record? I don't know why we have to sum up.

MR. KAPLAN: All right, your Honor.

THE COURT: You would have to go through all the dates again.

MR. KAPLAN: I will not do that.

Q Isn't it a fact, sir, that from December of 1966 until the end of 1970 Nabcor could get all of the Chevrolets it wanted either from Matt Slap, then Rohrer, and then Sloane? Isn't that true?

(Pause)

A It could get Chevrolets, yes. There were scattered instances where we had problems.

Q Putting aside these scattered instances you claim happened, it was true that during the entire period from December of 1966 until the end of 1970 Nabcor could get all of the new Chevrolets it needed from those three dealers, true?

A I would say that's true.

MR.KAPLAN: Your Honor, this is a very good point to break at before I go into the next line of examination.

THE COURT: The jury may go out.

We will recess until 2:15.

(Jury out)

THE COURT: What is the plan for the rest of the afternoon?

MR. KAPLAN: Your Honor, I probably don't have more than another 30 minutes.

THE COURT: Who comes next?

MR. PERSON: Mr. Murray, Robert Murray.

THE COURT: That will be the balance of the afternoon?

MR. PERSON: Probably, your Honor.

(Luncheon recess)

AFTERNOON SESSION

2.15 P.M.

ANTHONY MIAORANA, resumed.

THE COURT: I would just like to make an announcement. I told the lawyers and I will tell the jury now, I apologize for having the trial broken up. We have had the holidays and I had motion days.

I have something that is very urgent that has come up that has to be taken care of tomorrow, so I will not be sitting tomorrow and will resume on Thursday. I don't expect any real breaks after that. The pace of the trial, as it always does, picks up as it goes along, and we are going along very nicely now, so that is the way we will leave it.

MR. KAPLAN: With your Honor's permission, I have had tendered to me the books of receipts which we had subpoenaed, and I would like to have them marked for identification. There are eight of them and the first starts with a receipt dated September 21, 1966, and I will ask that that be marked Defendants' Exhibit A-8 for identification.

The second one is a receipt which bears the No. P-137, and I ask that it be marked Defendants' Exhibit B-8 for identification.

THE COURT: You don't have to describe them all. Get them marked.

xx (Defendants' Exhibits A-8 through J-8 marked for identification.)

CROSS EXAMINATION CONTINUED

BY MR. KAPLAN:

Q Mr. Maiorana, I show you Defendants' Exhibits A08 through J-8 for identification, and are these the Nabcor receipt books?

A I can tell these by the name Nabcor on them.

Q Referring to D-8, G-8, H-8, I-8 and J-8?

A They all have the Nabcor name on them.

These don't have Nabcor's name on them.

Q Referring to E-8 --

A E-8, C-8, B-8, F-8 and A-8.

Q Can you tell whether these last few you just referred to are the Nabcor receipt books --

MR. KAPLAN: If I may inquire to Mr. Person if there is any doubt --

THE COURT: Are you offering them?

MR. KAPLAN: I am not ready to offer them at this point. I want to see what is in them.

MR. PERSON: I would rather have some testimony on them.

THE COURT: There is no use of having somebody gaze through a bunch of books in court. That should have been done outside of the court rime.

I assume that they are the Nabcor books unless I hear to the contrary very shortly. Look at them over some recess.

Q Mr. Maiorana, Nabcor never had any intention of selling cars to fleets, is that true?

A I didn't quite get that.

Q Nabcor never had any intention of selling automobiles to fleets, true?

A To fleets?

Q Correct.

A I don't know if that is true or not. I don't believe -- we were selling to brokers.

Q Your objective was to sell to retail purchasers, is that right?

A Retail purchasers, as far as I know. If Frank had any other ideas, I don't know.

Q As far as you know, the possibility of selling to fleets never came up, true?

A Oh, no. We had some brokers who asked about it.

Q I read to you from your deposition of March

27, 1973:

"Q Now, did Nabcor anticipate selling any new cars to fleets?

"A I don't know. We never, we never discussed that.

"Q That is from 1966, to today Nabcor never discussed the possibility of selling cars to fleets, is that correct?

"A Never discussed that possibility."

A I never discussed it, [illegible] brokers did with Frank, some brokers did.

MR. KAPLAN: Your Honor, at this time I would like to offer Defendants' Exhibit U-6, which is a schedule of newspaper advertising run from Nabcor.

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit U-6 for identification received in evidence.)

MR. KAPLAN: I would like to invite the jury's attention to the fact that on page 1 for the period December 11, 1966, to January 31, 1966, Nabcor ran no direct newspaper advertising.

That in 1967 the total expenditures on direct newspaper advertising was $3304.94. That appears on page 8.

In 1968 there appears on page 9 that it ran $1479.73 worth of direct newspaper advertising.

MR. PERSON: Your Honor, could the term "direct" be explained so that they understand truly what that means? I don't believe they understand.

THE COURT: Why do you use the word "direct"?

MR. KAPLAN: Because the representation has been made to us that on occasion Nabcor used advertising agencies and in those cases paid the ad agencies and we have repeatedly requested in interrogatories and elsewhere information for expenditures on that, and it has never been forthcoming.

MR. PERSON: We have supplied documents, all the financials, all of the records of Nabcor.

MR. KAPLAN: I think that is a matter we can take up.

Page 11 indicates that the total advertising for the period 1969 was $1427.82, and for 1970 it was $5015.53.

Q Mr. Maiorana, I would like to discuss with you the subject of purchases of Pontiacs.

Before we do that, sir, did you have occasion to speak with your brother over the lunch recess?

A Yes. We ate together.

Q Between 10 past 2 and the time that you were summoned to court you and your brother Frank were standing outside in conversation, is that right?

A Yes.

Q Between the time you left the witness stand before lunch and the time you resumed after lunch you discussed with your brother your testimony this morning, true?

A Say that again?

Q You discussed your testimony this morning over lunch?

MR.PERSON: May we break that down according to when I was present and when I was not present? When I was present we were consulting and the subjects that we were discussing is certainly something that we cannot inquire into.

THE COURT: He hasn't asked any questions about what was said. He simply asked what occurred, and I don't have a problem yet.

MR. KAPLAN: Mr. Reporter, will you read the pending question?

(Question read.)

MR. PERSON: I object on the ground that is privileged, your Honor. I was there at the luncheon. We will stipulate, yes, of course we talked about the trial and about his testimony.

Q Was there a period between the time you left the stand this morning and the time you resumed it this afternoon when you spoke with your brother, Frank, out of Mr. Person's presence?

A Yes, there was.

Q What did your brother, Frank, say to you?

A We talked about personal things.

Q Did you have any discussion on the subject of this lawsuit?

A I don't think I recall discussion on it. We talked about many things, getting up here, something we did the other day together over the weekend. I don't recall discussing, no, I don't recall.

Q It is your testimony that apart from whatever may have happened in Mr. Person's presence you didn't discuss this lawsuit with your brother over lunch? Between the time you left the stand and now.

A We were out to lunch; I was with Mr. Person.

Q Listen to the question:

It is your testimony, is it, that apart from anything that transpired in Mr. Person's presence, you didn't discuss anything pertaining to this lawsuit with your brother between the time you left the stand about about 1 o'clock and now?

A During lunch you are talking about? I don't recall any discussion about the lawsuit.

Q Let's talk about Pontiacs. In the middle of 1967 Nabcor began buying Pontiacs from a dealer called Al Wilson Pontiac, true, true? Al Wilson Pontiac was a regular supplier of Pontiacs to Nabcor until August of 1969, true?

A I would say he was a supplier. I don't know what you mean by "regular." I do not. I did not deal with him. Jack Snyder did.

Q You don't know what I mean by "regular"?

THE COURT: Do you know what is meant by "regular"?

THE WITNESS: I don't know what is meant by that.

Q From your deposition of May 30, 1975:

"Q Al Wilson Pontiac was a regular supplier of Pontiacs to Nabcor for a substantial period of time, was he not?

"A Yes."

THE COURT: Go ahead, Mr. Kaplan.

Q In August of 1969 Al Wilson Pontiac raised its prices and Nabcor stopped buying there, true?

A I don't know. Jack Snyder did that. It was his job. You are asking me questions that I had little to do with.

Q Is that what you were told to say over lunch?

MR. PERSON: I object to the question.

THE COURT: Overruled.

Q Were you told to say you didn't have anything to do with these dealers or little to do with these dealers over lunch?

A No.

Q You didn't have any trouble testifying about Al Wilson Pontiac at your deposition, did you?

A At the depositions I was told by you that you wanted to hear only the answers that you wanted to hear and I had to give you an answer. I could not give you an explanation.

Q Mr. Maiorana, I'm going to request that you review the transcript of that deposition tonight and I want you to find in the transcript any such statement like that, and if you find it we'll recall you to the stand.

Now, sir, from the transcript of your deposition on May 30, 1975:

"Q Why don't you tell me the story of what happened between Al Wilson Pontiac and Nabcor from beginning to end in your own words.

"A Well --

"Q And I will --

"A Well, what happened was that they suddenly raised the price by 100 over what they were selling it to us for.

"Q Did they ever flatly refuse to sell to you at the new price of $100 over what they had been, you had been paying before?

"A No."

Now, sir, when Al Wilson raised the price by $100, you stopped buying from him, true?

A I never dealt with Al Wilson myself, so I don't know. It's only what I heard from Jack Snyder.

Q There came a time when you heard that Al Wilson raised the price, did there not?

A Yes.

Q That's when Nabcor stopped buying from Al Wilson, isn't it?

A I don't know. It may be.

Q I read to you from the transcript of your deposition on May 30, 1975 at page 903:

"Q So the reason Nabcor stopped doing business with Al Wilson Pontiac was because the price was too high, is that right?

"A Well, because the -- yes, the price was exhorbitantly high compared with the fleet prices that were being charged by others.

"Q In other words, you could get the Pontiac cheaper somewhere else, is that right?

"A Any fleet buyer could."

Now, sir, this difficulty about the price with Al Wilson Pontiac, that happened in August of 1969, true?

A I don't know if that's the date.

Q I show you a document marked as Defendants' Exhibit V5 for identification and I ask you if that refreshes your recollection as to when Al Wilson raised the price (handing).

A Yes. This was sent to Jack Snyder.

Q When did Al Wilson raise the price to Nabcor, sir?

A This letter is dated August 18, 1969.

Q Is that the time that Al Wilson raised its price to Nabcor?

A It says so in the letter.

MR. KAPLAN: I offer the letter.

MR. PERSON: No objection.

(Defendants' Exhibit V5 was received in evidence)

:xx

(Mr. Kaplan read to the jury from Defendants' Exhibit V5 in evidence)

MR. PERSON: I would like to have a side bar conference.

(At the bench)

MR. PERSON: We will go on offering hearsay evidence which will show there was a conspiracy among various dealers to up the price at the same time. That's what the letter reflected.

MR. KAPLAN: It's perfectly clear from the depositions if there was any such conspiracy we had nothing to do with it.

Furthermore, it was not I who wanted to get into this; it was only because the witness gave me a fight on the date and persisted in reading from the letter when --

THE COURT: I don't know why we have a side bar.

MR. PERSON: To be able to explain.

THE COURT: Explain it by getting the evidence. This is a letter received.

MR. PERSON: Jack Snyder is a participant in that communication so he will testify as to the events, and others that --

THE COURT: As to things people told him?

MR. PERSON: In connection with that letter.

THE COURT: You can't do that. It's an irrelevant subject. Again you have to put the evidence on with the right witnesses. Let's not spend any more time on it.

(In open court)

MR. KAPLAN: Ladies and gentlemen of the jury, you have Defendants' Exhibit J with you. You will note that save one exception of a transaction in 1970 the last Pontiac sold by Al Wilson Pontiac to Nabcor was on June 3, 1969, approximately ten weeks before the date of the letter relating to the price, Defendants' Exhibit V5.

Q Mr. Maiorana, apart from this price increase, Nabcor never had any other problems with Al Wilson Pontiac from the time it started buying from there in 1967 until August 18, 1969, is that true?

A I could not tell you. I didn't deal with Al Wilson.

Q At your deposition, sir, on May 30, 1975, you testified as follows:

"Q Did Nabcor ever have any other problems with Al Wilson Pontiac apart from this price increase?

"A No. I can't remember. I can't recall any."

Before Nabcor received Defendants' Exhibit V5, the letter of August 18, 1969, Al Wilson Pontiac never refused to provide new cars to Nabcor, true?

A I don't know about Al Wilson Pontiac. Jack Snyder was dealing with them.

Q At your deposition on July 15, 1975, you testified as follows:

"Q Now, prior to that telephone conversation to which you have referred, Nabcor's receipt of Exhibit 33, (which is Defendants' Exhibit V5 here) from Al Wilson Pontiac, did Wilson Pontiac ever refuse to provide automobiles to Nabcor?

"A Prior to the letter?

"Q Yes.

"A No. No. I don't recall that he ever refused to provide it."

As a matter of fact, sir, between the time you first started dealing with Wilson Pontiac in 1967 and August 18, 1969 Nabcor got whatever Pontiacs it wanted from Wilson, true?

A I don't really know.

Q In your deposition on July 15, 1975 at page 1279:

"Q So that during the period between your first setting up Wilson Pontiac as a source of Pontiacs and the letter, which is Defendants' Exhibit V5, Nabcor got whatever Pontiacs it wanted from Wilson Pontiac, correct?

"A As I recall it, yes."

Now, sir, when Nabcor stopped buying from Al Wilson Pontiac, it tried to locate another source of Pontiacs at a cheaper price, true?

A I would imagine.. I didn't do it.

THE COURT: You have got to keep your voice up.

A I said I would imagine. I guess we would have to look for another source, yes.

Q And you did in fact look for a cheaper source at that time, true?

A I guess we did. I didn't.

Q From your deposition on July 15, 1975, at page 1280:

"Q When you received Defendants' Exhibit V5, the letter indicating that Wilson wanted to raise the price, Nabcor made an effort to locate another source of Pontiacs at a cheaper price; is that correct?

"A Yes."

A Yes, Nabcor.

Q Now, sir, Nabcor then located a dealer called Kline Pontiac in Doylestown, Pennsylvania, true?

A Yes. Frank located Kline Pontiac.

Q And Kline Pontiac sold Nabcor Pontiacs at prices Nabcor was willing to pay?

A Yes.

Q As a matter of fact, Nabcor began dealing with Kline Pontiac on or about August 20, 1969, two days after the date of the letter from Wilson, true?

A I don't know. Frank located that one. I believe it was Frank. And Jack Snyder continued to deal with them.

Q In your deposition on July 15, 1975 at page 1284:

"Q Nabcor began dealing with Kline Pontiac on or about August 20, 1969; is that right?

"A On or about, yes."

Your Honor, I offer in evidence Defendants' Exhibit U5 for identification, a letter from Kline Pontiac to Nabcor, dated August 20, 1969.

THE COURT: Any objection to U5?

MR. PERSON: No objection.

THE COURT: It will be received.

xx (Defendants' Exhibit U5 was received in evidence)

(Mr. Kaplan read to the jury from Defendants' Exhibit U5 in evidence)

T3 Q Mr. Maiorana, Nabcor obtained new Pontiacs from Kline Pontiac for several years after August 20, 1969, true?

A Whatever the time was on the books.

MR. KAPLAN: Ladies and gentlemen of the jury, if you turn to page 6 of Defendants' Exhibit J, you will see that the first transaction with Kline Pontiac, the sale of a new Pontiac 1970 model on October 14, 1969, and that all of the remaining Pontiacs on that exhibit are sales by Kline to Nabcor, the last being July 17, 1970.

Q Mr. Maiorana, KlinePontiac never refused to sell Pontiacs to Nabcor, true?

A I don't know. I didn't have that much contact with him myself.

Q At your deposition on July 15, 1975, you testified as follows:

"Q Did Kline ever refuse to sell Pontiacs to Nabcor?

"A Not that I can recall."

Through the period when Nabcor was dealing with Kline, it was able to get whatever Pontiacs it wanted from Kline, isn't that right?

A You have to ask Jack Snyder.

Q At your deposition of the same day, page 284:

"Q Nabcor throughout the period when it was dealing with Kline was able to get whatever Pontiacs it wanted from Kline?

"A So far as I can recall."

From the middle of 1967 through at least the end of 1970 Nabcor could get every Pontiac it wanted either from Wilson or Kline, isn't that true?

A I don't know that, Mr. Kaplan.

Q You testified on direct about an occasion when Mr. Speece and Mr. Di Simone came to your office in Jenkintown. That was on December 13, 1967, is that right?

A Yes.

Q You testified that on that occasion they told you that they would see to it that Nabcor wouldn't get any new cars, true?

A Yes.

Q You are absolutely sure they said that?

A Am I absolutely sure?

Q Yes.

A Yes.

Q Do you have a specific recollection of that statement being made in your mind?

A I have a recollection, specific recollection of the meeting, and that is what they said in substance, yes.

Q At your deposition, sir, you were asked about this meeting, true? It is perfectly clear you were, and I will answer it.

THE COURT: This was at the end of 1967, early 1968?

MR. KAPLAN: He just testified December 13, 1967.

THE WITNESS: Thereabouts. I don't know that is exactly the same.

MR. KAPLAN: I am reading from the transcript of the sworn deposition of the testimony of this witness conducted on March 27, 1973, page 408:

"Q Mr. Maiorana, have you ever been present at any discussion with any representatives of GM at which GM said it would not permit dealers to sell cars to Nabcor?

"A Have I ever been present at the discussion --

"Q With representatives of GM at which GM representatives said anything to the effect that it would not allow dealers to sell cars to Nabcor or its brokers?

"A You are talking about representatives of the factory?

"Q Yes.

"A I am trying to recall the date. I can't recall the date. Two gentlemen came to see me or came in the offices in Jenkintown and I eventually talked to them. Let's see if I can remember their names. Di Simone was one of them, and I can't remember the other fellow's name right at this instant.

"Q Did they represent themselves to be employees of the General Motors Corporation?

"A Yes.

"Q Did they show you a card?

"A Yes, each of them gave me a card and one was manager and assistant manager and the other one was representative, I believe. But one, the name of one was Di Simone and, as I said, right at this moment I can't recall the other name.

"We discussed the Nabcor system in my office. They seemed interested in learning about it and we talked about it and finally they asked, we were discussing fleet certificates also, they asked if or how many cars we had purchased in the past year, and they volunteered to say that we needed to have purchased 25 cars.

"And I told them we had, we purchased more than 25 cars. Then the question came up, 'Did you put them in your name,' and I said no, and he said, 'Well, you can't get a fleet certificate and you won't unless you put them in your name and keep them for six months.'

"Now, that was one of more or this was an incident with factory representatives from the General Motors Division as what they represented themselves as, of General Motors Chevrolet Division.

"Q Now --

"A And they said that we couldn't get a fleet certificate, and I asked them if we could get cars even without a fleet certificate. They said no, the dealer would not sell you cars unless you have a fleet certificate, and that was the end of that.

"Q They said the dealer will not sell you any cars under any condition unless you had a fleet certificate?

"A Right. They said you wouldn't get cars without the fleet certificate. But they definitely said we couldn't get a fleet certificate unless we had 25 cars registered in our name and for six months.

"Q They definitely said that?

"A Yes.

"Q Now, did they definitely say that unless you had a fleet certificate you couldn't buy cars from dealers? Did they definitely say that?

"A They said we couldn't get them. You won't get them without a fleet certificate.

"Q You won't get any cars without a fleet certificate?

"A Right."

Page 413, line 14:

"Q Now, was there anything else said during the course of the conversation with Mr. Di Simone and the other gentleman?

"A That is all I can recall.

"Q You told me everything about that conversation that you can recall, is that correct?

"A I told you everything I can recall, yes."

Q Mr. Maiorana, was that testimony that I have just read to you true?

A The testimony that you just read was part of it. That was true, the testimony was true, but this was part.

There was in the questioning at one time, I told you that, I just dont know where in there, when I have said that. I would have to look through that.

Q Mr. Maiorana, I will hand you the transcript and I will invite your attention to pages 409 through 413, and I would like you to tell me where you said on that occasion that Speece and Di Simone said that to you, that you couldn't get more cars.

MR. PERSON: I object, he already asked the question and he answered it.

THE COURT: I don't know what good it is going to do. You have read it?

MR. KAPLAN: I certainly have, your Honor.

THE COURT: You read it. The jury, I guess, has heard the deposition and we heard his trial testimony. Let's move on.

Q You claim that Speece and Di Simone told you on December 13, 1967, that Nabcor wasn't eligible for a fleet certificate, true?

A Yes, they told me that.

2 Q You also claim that upon being told that you asked Speece and Di Simone if Nabcor could get cars without a fleet certificate, is that true?

A I remember talk about a fleet certificate and I remember us talking that we wouldn't get any cars without it, because we were going to sell cars, they knew we were selling cars and --

THE COURT: Keep your voice up.

A (Continuing) We couldn't get any cars to resell them.

Q Did you ask them on that occasion whether you could get cars without a fleet certificate?

A I don't recall if I asked them specifically that way.

Q I will read to you from your testimony in the preliminary hearing on this matter on October 7, page 328:

"Did you ask them whether you could get cars without a fleet certificate?

"A When they were in the office?

"Q Yes, sir.

"A They told me I cannot get it without a fleet certificate.

"The Court: There is a very precise question to you now.

"You heard your deposition. The deposition as read to you quoted you as asking them specifically if you could get cars without a fleet certificate.

Mr. Kaplan is now asking for your memory now as to whether you made that specific question.

"A Yes, it was in the conversation. They asked a question -- it was like a question -- a statement like a question, 'Do you know you are not supposed to sell cars? You are not a fleet buyer, you don't have a fleet certificate.'

"And I said, 'Could you get cars without a fleet certificate?' In other words --

"The Court: You asked that specific question?

"The Witness: Yes."

Now, sir, you claim that Speece and Di Simone said that dealers wouldn't sell you any cars unless you had a fleet certificate, is that true?

A Yes.

Q By December 13, 1967, Nabcor had been in business almost two years, is that right?

A Almost, yes.

Q It had gotten new cars from dealers, had it not?

A Yes, it had.

Q New General Motors cars?

A Yes, it had.

Q As a matter of fact, it had gotten over 100 new cars from dealers by the time Speece and Di Simone walked into your office, isn't that right?

A Right. It had gotten cars, I don't know the amount.

MR. KAPLAN: I offer in evidence Defendants' Exhibit XX, an excerpt from Nabcor's answers to interrogatories in this case.

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit XX for identification received in evidence.)

MR. KAPLAN: Ladies and gentlemen, you will observe that on Defendants' Exhibit XX Nabcor stated that in the years 1966 and 1967 they bought 93 new General Motors cars, 11 Fords and 15 Chryslers.

Q Mr. Maiorana, when Nabcor bought all those cars in 1966 and 1967, it didn't have a fleet certificate, did it?

A That's right.

Q After the meeting with Di Simone and Speece Nabcor was in business a number of years, true?

A That's right.

Q It got at least 375 more new cars from dealers, true?

A It says 341 here.

Q It does. In the years 1968 through 1972, according to Defendants' Exhibit XX, Nabcor got 248 new General Motors cars.

Mr. Maiorana, Nabcor didn't have a fleet certiciate when it bought those 248 General Motors cars either, true?

A That's right.

Q Is it still your testimony that you asked Speece and Di Simone whether you could get new cars without a fleet certificate?

A Yes.

Q When Speece and Di Simone came in your office on December 13, 1967, they told you they were from the Chevrolet zone in Bala-Cynwyd, Pennsylvania, right?

A Yes.

Q Bala-Cynwyd is in the Philadelphia area, true?

A Suburbs, yes.

Q You testified on direct that the subject of Rohrer Chevrolet came up in that conversation with Speece and Di Simone, is that true?

A Yes, it did.

Q There was no mention of Rohrer Chevrolet in your account of this meeting that I read to you a few moments ago, was there?

A I didn't hear it.

Q Sir?

A I didn't hear it.

Q The portion of the deposition which I read to you a few moments ago was given in 1973.

You also were asked about this meeting in 1975. In 1975, sir, you testified that the dealer mentioned in this meeting with Speece and Di Simone was Matt Slap Chevrolet. Do you recall that?

Let me read from the transcript of your deposition, February 27, 1975, at page 730. This is you speaking:

"We discussed that, they knew that I was trying to buy automobiles from Matt Slap.

"Q They said they knew you were trying to buy automobiles from Matt Slap?

"A Yes.

"Q They identified Matt Slap by name?

"A What?

"Q They identified Matt Slap by name?

"A They identified Matt Slap by name, yes."

MR. KAPLAN: Consistent with your Honor's ruling, I will represent to the jury that in none of the accountsMr. Maiorana gave in his deposition of this meeting with Speece and Di Simone, at the pre-trial deposition, did he ever mention there was any discussion of Rohrer Chevrolet.

Q Mr. Maiorana, you have up there Defendants' Exhibit KKK on the stand. I believe the members of the jury may still have it, which is the letter from Matt Slap Chevrolet to Nabcor.

A Yes.

Q That letter was received by Nabcor six or seven weeks after Speece and Di Simone were in your office, true?

A Yes, that's right.

Q Mr. Maiorana, at your deposition after you said it was Matt Slap Chevrolet that these gentlemen mentioned you were shown that letter; is that right?

A When?

Q At your deposition after you testified that Speece and DiSimone mentioned Matt Slap Chevrolet you were shown that letter; do you recall that?

A Not specifically, no.

Q On February 27, 1975, at page 730 of your deposition appears the passage I just read.

"We discussed that. They knew I was trying to buy automobiles from Matt Slap.

"Q They knew you were trying to buy from Matt Slap?

"A Yes."

At page 740, ten pages later:

"Q Mr. Maiorana, I show you Exhibit 30" -- which is the same letter KKK -- "and I ask you if that's not a copy of a letter you received from Mr. Sloane of Matt Slap?"

And a few lines later:

"Q You read it?

"A Yes.

"Q Is that a copy of a letter you received on or about January 31, 1968?

"A Yes."

Mr. Maiorana, you have testified that the dealer who came up at that meeting was Rohrer Chevrolet during this trial. The reason you have done so, sir, is not because it happened but because you knew about this letter, Defendants' Exhibit KKK, with respect to Matt Slap, true?

A I didn't follow that question.

Q Mr. Maiorana, the reason you have said that it was Rohrer Chevrolet that came up at this meeting with Speece and DiSimone rather than Matt Slap is because you knew of the existence of Defendants' Exhibit KKK, true?

A No.

Q You never mentioned Rohrer Chevrolet --

THE COURT: We have had that many times. Let's proceed.

Q Now, sir, there was a preliminary hearing in this case. Previously you testified on October 7. On that occasion you were asked about this meeting and you testified as follows, pages 311 and 312:

"Q Were you dealing with Rohrer Chevrolet, Nabcor dealing with Rohrer Chevrolet at that time?

"A Yes.

"Q What were you buying from Rohrer Chevrolet?

"A Chevrolets.

"Q How long did that relationship last with Rohrer Chevrolet from that point?

"A It lasted about another month. In January, I believe, we were cut off.

"Q By that you mean what?

"A They stopped the cars that we had ordered.

"Q Was Nabcor buying cars from Rohrer Chevrolet about that time, about a month or so after the visit?

"A No. A month or so they stopped the Chevrolets, then that is it. They shut it off in January of 1968."

MR. KAPLAN: Ladies and gentlemen, I have distributed to you again Defendants' Exhibit D7, which is the schedule of the transactions with Rohrer. You will observe that after December 13, 1967, Rohrer Chevrolet sold Nabcor 83 new Chevrolets.

Q Mr. Maiorana, the testimony I have just read, which you gave on October 7 in this court, was false, was it not?

A No. It was not.

MR. PERSON: There were many sales before that. It's misleading to forget about that.

THE COURT: There is a question pending.

A No, it's not. I also said later that they stopped and someone asked the question --

THE COURT: Take it easy.

Q The testimony which I have just read, which you gave in this court on October 7 of this year in which you stated "No, a month or so they stopped the Chevrolets, then that is it, they shut it off in January of 1968," that testimony, sir, was false, was it not?

A No.

Can I continue to answer it?

THE COURT: Yes.

A That came up right at that time and I said they stopped and continued again afterwards. It was a connection between Jack Snyder and Mr. Speece. They delivered the cars.

Q Mr. Maiorana, I'll read on from that point in the transcript. This was on your direct examination by your counsel, Mr. Person:

"Q Was Nabcor buying cars from Rohrer Chevrolet about that time, about a month or so after the visit?

"A No. A month or so they stopped the Chevrolets and that is it. They shut it off in January of 1968.

"Mr. Person: I won't go into matters that relate to Rohrer Chevrolet. I think that's covered in another part of the pretrial brief.

"Q Have you communicated with GMAC?

"A Yes.

"Q Particularly do you know a Hank Thomas of GMAC?

"A Yes."

Hank Thomas and this subject of the meeting and Rohrer Chevrolet, did not come up again on direct examination and you did not until cross-examination attempt to explain away that testimony.

Isn't that a fact?

A It was the same day, wasn't it?

MR. KAPLAN: The record speaks for itself. No further questions.

MR. PERSON: I would like to read from the pretrial brief to see what the reference is. This was in the pretrial brief that he read about --

THE COURT: Who read about?

MR. PERSON: Mr. Kaplan just read where I had said --

THE COURT: That's you saying it and not the witness.

MR. PERSON: He's raising that issue. He's saying there is no reference to the other dealings with Rohrer Chevrolet.

THE COURT: Look, Mr. Person --

MR. PERSON: Your Honor --

THE COURT: The jury has the record.

MR. PERSON: I said we would not go into the matters relating to Rohrer Chevrolet. There were other matters.

THE COURT: Did you ask him on the stand about -- Mr. Person, I don't understand this.

MR. PERSON: There is an attempt to make the jury believe that there was not any further testimony that he could have given concerning Rohrer. There was plenty of information. We have seen the charts. We have evidence in this book here. There was a reference to that book.

THE COURT: By the witness?

MR. PERSON: That was just read to the jury.

THE COURT: The jury has the statement. It was read fully and there is a question: Was Nabcor buying cars from Rohrer Chevrolet about that time? This was a question by you. These were all questions by you.

"Q Was Nabcor buying cars from Rohrer Chevrolet about that time, about a month or so after the visit?

"A No. A month or so they stopped the Chevrolets. Then that is it. They shut it off in January."

And then you said, "I won't go into matters that relate to Rohrer Chevrolet. I think that's covered in another part of the pretrial brief."

MR. PERSON: That was in reference to the other transactions with Rohrer. Rohrer was shut off for a period.

MR. KAPLAN: If I may say so, it was the witness who was under oath and not Mr. Person.

THE COURT: Ladies and gentlemen, you have the testimony. The record of the preliminary hearing was as has been read. Then Mr. Person ceased the questioning on that point and Mr. Person is now saying that if he had gone on with the questioning he would have brought out further pgr8 A.Maiorana-cross-redirect

developments in Rohrer Chevrolet, but there was no such questioning.

Then, on cross-examination, at the preliminary hearing the further transactions about Rohrer were brought out. You can draw the appropriate conclusions from that.

Is there any redirect other than that?

MR. PERSON: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. PERSON:

Q What were the primary duties you had at Nabcor?

A As I explained before, I was administrator. I took care of the brokers after they were put on. I sold franchises, helped to sell franchises, and after the brokers came in I helped to train them. I worked out their material, their training packages, helped them make their books , get them together, administrate that to them, continue to give them training over the phone, answer their questions over the phone, all their problems that they had day to day in doing their job or running their business. These were part of the administrative duties I had.

Q Were these your primary duties?

obtain cars they sought to obtain from these various dealers.

The thing is when you get to these things which are really against interest and they're admissions that the opponent wants to bring out, then I think the opponent has a right to bring that out and they have some ring of reliability.

You are getting your client to tell a lot of stuff for his benefit and Mabcor's benefit, and that is hearsay. I'm thinking out loud. We can go back and forth on this.

But I think there is a problem: You have the most aggrevated credibility. I think you have to watch your step in this case. I'm just saying again that I think it is a different thing to allow Mr. Kaplan to bring out admissions against the interests of the witness, against the interest of his company and I don't know if this does do anything but open up hearsay testimony on other subjects.

The New York area, different dealers, I think that's a different subject, and I think when you are interrogating your own witness you better stick to the rules of evidence -- and what that amounts to, I don't know.

THE COURT: I told you --

MR. PERSON: I am only going into what was raised. They raised this issue and certainly we have --

THE COURT: You can put in all the proof you want in the way --

MR. PERSON: With this witness.

THE COURT: He cannot simply repeat things that he says were told him by Rohrer. I have ruled on that and that is that. You have witnesses here from Rohrer.

MR. PERSON: But these are matters that were raised by Mr. Kaplan, and I am trying to comply with your requirement that he not testify as to what he was told by other people.

BY MR. PERSON:

Q Was Nabcor unable to obtain delivery of automobiles from Rohrer at the beginning -- at some point around the beginning --

A Yes.

Q I have to ask the question first. Around the beginning of 1968?

A Yes.

Q Do you know whether that means anything? I am not trying to put words in your mouth.

A Yes.

Q How do you know it means anything?

A Well, because the cars that -- Rohrer had three cars there.

Q Don't say anything they told you if you can avoid doing that. Just testify to what you are aware of.

MR. KAPLAN: I move to strike the testimony that Rohrer had three cars there unless there is a foundation that the witness saw them.

MR. PERSON: You asked him about the ability --

THE COURT: No. Mr. Kaplan's questions were basically whether Nabcor got cars, it was the obtaining of cars by Nabcor.

You are perfectly able if you want to bring out some things that Mr. Kaplan didn't ask or anything else that relates to the basic obtaining or not obtaining of cars by Nabcor. That is all right.

You asked him whether Nabcor was unable to obtain delivery from Rohrer at the beginning of 1968. There was no objection, and he answered.

Q Was there a time, did there come a time at which Nabcor was able to obtain cars from Rohrer after that time?

A Yes.

Q Do you have any other information about dealings with Rohrer subsequent to that?

MR. KAPLAN: Objection.

THE COURT: Sustained in that form.

Q Were you aware that Nabcor was unable to buy cars from various GM dealers in the Philadelphia area prior to December 13, 1967?

MR.KAPLAN: Objection.

THE COURT: Sustained. I am sustaining it because of the generality which doesn't help. If you want to ask about a specific thing.

Q Have you heard of Roger Penske Chevrolet?

A Yes.

Q Was Nabcor dealing with Roger Penske Chevrolet?

A Yes, it was, at one time.

Q Do you know when? I would say from Exhibit J that Roger Penske's two transactions --

THE COURT: Nobody can hear you.

MR. PERSON: Roger Penske had two transactions with Nabcor that occurred in August and September, 1966, a Chevrolet in both cases.

Q Did there come a time when Nabcor was unable to get any further cars from Penske?

A Yes.

Q We won't go into any of these matters.

Have you heard of Norton Chevrolet?

A Yes.

Q Norton Chevrolet, according to Defendants' Exhibit J, began -- delivered cars to Nabcor on September 9, 1966.

Where were they located?

A Norton Chevrolet, I believe it was -- I believe Sloane bought out Norton Chevrolet.

THE COURT: Where was it located, Philadelphia?

THE WITNESS: In Philadelphia, yes.

Q Did there come a time when Nabcor was unable to buy any additional Chevrolets from Norton?

MR. KAPLAN: Objection, your Honor, on two grounds. First of all, inasmuch as has been pointed out how little the witness knows, there is no foundation for his knowledge.

THE COURT: Overruled.

MR. KAPLAN: Secondly, I object on the ground of relevance and Rule 403. We now have Mr. Person trying to have some inference,presumably, whatever the testimony is about, starts and stops with other dealers, and there is absolutely no evidence whatever in this record that General Motors had anything whatever to do with any of these things.

MR. PERSON: He is merely summing up because certainly that is a weak argument that you have.

THE COURT: I will overrule the objection.

Did there come a time when you couldn't get any cars from Norton?

THE WITNESS: Yes.

Q Did Nabcor obtain new sources of supply after GM dealers no longer dealt with Nabcor?

A After a dealer stopped dealing, then we would know through brokers or through the people that ordered cars, whoever it was at that time, and it would get to Frank and he eventually --

Q Don't testify to what he would do.

A Other people would be put on to --

Q Let me ask you, do you know what length of time it would take to obtain a new source of supply?

MR. KAPLAN: I object.

THE COURT: Sustained.

MR. KAPLAN: In the case of Wilson and Kline it was two days.

Q Was it longer than two days?

THE COURT: Be specific. Do you know how long in any case it took for you to get a new GM dealer?

A Usually take a couple of days, sometimes one day, sometimes three days.

Q And then howlong would it take for orders to be obtained through a new source of supply, orders for cars?

A It all depends on the arrangements that were made. In other words, if the letter was to be sent, the letter would come and send the order through the dealer --

THE COURT: The jury can't hear you.

A It would be according to the arrangements that were made. The person that made the arrangements with the dealer may ask for a letter, it may be two or three days for the letter to come and the orders would be sent to that dealer and ordered by that dealer.

Q Were you in charge of following up on late orders or non-delivery of automobiles?

A Yes. The brokers would complain and I would get these phone calls and I would discuss their problems.

MR. KAPLAN: I move to strike what the brokers said.

THE COURT: He hasn't really said anything.

Q Do you recall the testimony concerning Wilson Pontiac? This letter is dated August 18, 1969, in which there is an increase in price of $150 announced in the letter.

MR. KAPLAN: It only says 100.

Q To 150 over invoice. Do you know a Kolmar Pontiac?

A Yes.

MR. PERSON: I offer in evidence Exhibit 571.

MR. KAPLAN: No objection.

THE COURT: Received.

xx (Plaintiffs' Exhibit 571 received in evidence.)

(Exhibit read.)

MR. PERSON: I offer Exhibit No. 568.

MR. KAPLAN: For what purpose?

MR. PERSON: To show what happened on or about August 18, 1969.

MR.KAPLAN: Objection as irrelevant and hearsay.

MR. PERSON: I would like to show the letter and note the similarity in dates, the approximate date of the Wilson letter.

THE COURT: I would like to see it.

(Pause.)

dealer at the same time. I think the jury should know that.

THE COURT: Are you trying to indicate that General Motors was responsible for that? Do you want to argue that?

MR. PERSON: I think that it's needed to show that the reason for changing from Wilson to --

THE COURT: This had to do with a price fixing conspiracy. You want to argue that to the jury.

MR. PERSON: Yes.

THE COURT: I would not let you do it. If that's what you are trying to get at I will sustain an objection. I will not permit any such argument unless you fix General Motors in with that price fixing conspiracy.

(In open court)

MR. PERSON: I would like to point out from Defendants' Exhibit J that between August 8, 1967 and the date of this meeting between the witness and Mr. Speece and Mr. DiSimone on December 13, 1967, Nabcor had purchased 12 new Chevrolets from Rohrer; and also during that same period of time Matt Slap sold two cars to Nabcor, before this meeting with Mr. Maiorana.

BY MR. PERSON:

Q You testified that Nabcor did not have a fleet certificate and that Nabcor was able to obtain cars during this period when Nabcor did not have a fleet certificate.

Do you recall any instances where Nabcor was unable to obtain cars because it did not have a fleet certificate?

MR. KAPLAN: Hearsay, your Honor.

THE COURT: Sustained.

Q Did Nabcor ever make an attempt to obtain a fleet certificate in order to be able to obtain cars?

MR. KAPLAN: No foundation. If he wants to ask the witness what his personal knowledge is, that's fine.

Q Were you connected --

THE COURT: I will overrule that objection.

THE WITNESS: Which one do I answer? I lost it.

THE COURT: Did Nabcor ever attempt to obtain a fleet certificate?

THE WITNESS: I went to see Sloane, Bob Sloane, to make application --

MR. PERSON: I don't want to get into the hearsay problem again.

Q Was the purpose in seeking a fleet certificate to be able to obtain cars, Nabcor's purpose?

A Yes.

MR. KAPLAN: I object.

THE COURT: Overruled.

Q You said that various car dealers refused to sell cars to Nabcor and did Nabcor have a fleet certificate --

THE COURT: I don't think he said that. I don't think I allowed that.

That's the whole problem. He said this is Nabcor's end of it and he knows about that, but as far as what some dealer said, whether he refused or whether --

MR. PERSON: I'm not asking for that.

Q Just at the period of time when there were any refusals by dealers did Nabcor have --

MR. KAPLAN: Objection.

THE COURT: I will sustain that.

Q Did Nabcor have a fleet certificate during the Rohrer incident?

A No.

MR. PERSON: No further questions.

THE COURT: Does that conclude Mr. Anthony Maiorana?

MR. KAPLAN: I have a brief recross, your Honor.

THECOURT: Finish it.

MR. PERSON: One further question.

BY MR. PERSON:

Q Did your presumed ability to obtain cars from Rohrer take place subsequent to Mr. Frank Maiorana's meeting with Mr. Belcher?

A Yes.

RECROSS EXAMINATION

BY MR. KAPLAN:

Q I will read from page 56 of your deposition on March 26, 1973:

"Q Do you have anything to do with contacting sources of supply of cars for Nabcor brokers and customers?

"A Yes. I also do that.

"Q Did you perform that function continuously since 1966 by contacting sources of supply?

"A On and off, yes.

"Q What period did you not contact sources of supply?

"A Well, 1966 I did and I didn't. 1967 I did and 1967 I didn't. And 1968 I did and didn't, and so on.

"Q Some days you do and some days you don't?

"A Right.

"Q But generally from the period 1966 through today you, from time to time during that period, contacted sources of supply of cars?

"A Yes.

"Q For Nabcor and its customers?

"A Right.

"Q During that period of 1966 through today did you have occasion to contact dealers, franchised GM dealers, to ask them if they would sell cars to Nabcor or its customers?

"A Yes, sir, I would have.

"Q Not would have. I am asking did you.

"A Yes, I did."

Now, sir, you referred to this financing application through Matt Slap Chevrolet and Mr. Sloane. Did you provide Mr. Sloane with information concerning Nabcor and its business and financial condition in that connection?

A No.

Q Not at all?

A You are talking about renting?

Q In the early part of 1968 you applied for a line of credit from GMAC through Slap Chevrolet.

A Yes.

Q Did you provide any information to Slap Chevrolet in connection with that?

A No. I brought him Frank's application.

Q That is the guarantor financial statement?

A Yes.

Q Did you give him any other information about Nabcor?

A We discussed how many cars we wanted and how we wanted to pay them back and what we were going to do with them.

Q Did you give him any financial statements?

A I don't believe I gave him any information there at all, except Frank's statement.

Q You testified on redirect that there came a time when Nabcor could not get any more cars from Roger Pensky Chevrolet, true?

A Yes.

Q Was that the truth?

A Yes, it was.

Q I read to you at page 898, your deposition, May 30, 1975:

"Q Do you have any information to the effect that Penske Chevrolet ever refused to sell to Nabcor?

"A Not that I can recall, no."

Now, sir, the fact of the matter is that simply stopped buying cars at Penske Chevrolet, isn't that right?

A From what I hear about that, they sold a demonstrator and we didn't want to buy demonstrators.

Q That was the reason you stopped buying with Penske?

A They didn't want to sell new cars.

Q I read to you from page 174 of the plaintiffs' pretrial brief which you have expressly adopted in the signature page from your deposition.

"The first cars from Penske looked like demonstrators' used cars so Nabcor stopped dealing with Penske. Nabcor believed strongly that Penske was dressing up demonstrators and selling them to Nabcor as new cars."

Now, sir, you testified that there came a time when you could not get any new cars from Norton Chevrolet in Philadelphia. Is that true?

A Yes.

Q There came a time when you could not get new cars from them, is that right?

A Yes.

Q You personally never talked to anybody at Norton Chevrolet?

A No. I don't recall talking to anybody there.

Q So whatever you said about Norton Chevrolet is hearsay, right?

A Yes.

Q I read to you from page 524 of your deposition on February 24, 1975:

"Q Did Norton Chevrolet ever refuse to sell cars to Nabcor?

"A I don't know. You say Nabcor? To me whether -- I don't recall him ever refusing me because I don't recall ever getting cars from Norton Chevrolet. I don't know if anybody else talked to him and they refused anybody else."

Now, sir, it was part of your responsibilities at Nabcor from time to time to contact dealers to get new cars from you?

THE COURT: He said that.

Q Now, sir, you were selling cars in competition with dealers, true?

A Right. Yes.

Q And a dealer could reasonably reach the conclusion that it would be against its business interest to sell to you because you were trying to compete with him, true?

THE COURT: Why is this raised on recross?

MR. KAPLAN: Mr. Person tried to elicit the fact or the claim that Penske and Norton stopped delivering cars to Nabcor. The only possible relevance would be the inference --

THE COURT: I think you can argue that.

MR. KAPLAN: May I read in his testimony on this point? It's brief.

THE COURT: Yes.

MR. KAPLAN: Page 887 of the witness' deposition, May 30, 1975:

"Q And Nabcor of course was selling cars in competition with franchised dealers?

"A Yes. I would call it that.

"Q And the dealer could reasonably reach the conclusion on his own that it would be against his business interests to sell to Nabcor for that reason, couldn't he?

"A I imagine he could. He could have just as well told us in the beginning though rather than saying 'Yes, we'll sell them to you' when he knew we were selling them and later giving us that excuse."

You knew there were dealers who thought Nabcor was in the leasing business, true?

A No. I didn't know that.

Q Transcript of the witness' deposition February 26, 1975:

"Q Did you ever have any reason to believe that dealers with whom you negotiated for supply of automobiles thought Nabcor was inthe leasing buiness?

"A Yes."

Nabcor never in fact leased any cars to anyone, true?

A No. It didn't lease any cars to anyone?

Q You didn't tell the dealers that you approached to buy new cars that Nabcor was reselling cars, did you?

A I did tell them -- anybody I talked to -- I told them we were reselling cars.

MR. KAPLAN: I read from the transcript of the witness' deposition at page 622, February 26, 1975:

"Q You on occasion negotiated with dealers to set up sources of supply, I think you said; is that right?

"A Yes.

"Q In the course of conducting those negotiations did you make it a practice of telling the dealers that Nabcor was a reseller of cars?

"A Did I make it a practice that Nabcor was a reseller of cars?

"Q Yes.

"A No."

At page 623:

"Q When you were negotiating with dealers to get them to sell cars to Nabcor, did you ever make statements to them about what Nabcor was going to do with the cars?

"A No."

No further questions, your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. PERSON:

Q Did any dealers, GM dealers, whoever sold cars to Nabcor, require that the title to these cars be made out in the name of Nabcor's customer rather than Nabcor?

A Yes.

MR. KAPLAN: I move to strike. Hearsay.

THE COURT: I thought we were about over.

MR. PERSON: We are.

MR. KAPLAN: This is a new subject.

THE COURT: You raised a brand new subject, the thing about leasing. We should have wound this up quite a while ago.

Objection overruled.

Q Have you seen any letters that have been addressed to Nabcor but not in the name of Nabcor, such as Nabcor Leasing, or something like that?

A Yes.

Q Do you ever recall having told these dealers that Nabcor was a leasing company?

A No.

Q Did you ever discuss with any of these dealers, just yes or no, the reason why the letter was addressed to Nabcor Leasing, their reason?

A No.

MR. KAPLAN: I object to that.

THE COURT: Sustained.

Q Can you state any reason why franchised dealers would be willing to sell to Nabcor?

MR. KAPLAN: Objection.

THE COURT: Sustained.

Q Have you ever stated to any dealers the reasons why they would benefit in selling to Nabcor?

A Yes.

MR. KAPLAN: I don't know what that means.

Q What reason did you give a dealer that it would be advantageous to sell to Nabcor?

A That it's profitable to him.

THE COURT: That is all.

MR. PERSON: Yes.

THE COURT: You may step down.

You are excused now until 10 o'clock Thursday. Same room.

(Adjourned at 4:40 p.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Frank Maiorana (Resumed)			1614	
Anthony Maiorana	1633	1646	1740 1770	1763

EXHIBIT INDEX

Defendants	Identification	In Evidence
G-5		1681
W-5		1687
Q-5		1691
KKK		1697
U-6		1706
V5		1714
U5		1719
XX		1729
Plaintiffs		
571		1757

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Official Court Reporter
U. S. District Court

Arthur Russell

Phil Golden

rp

NATIONAL AUTO BROKERS CORP.,
et al.,
Plaintiffs,

vs.

70 Civ 5 421A

GENERAL MOTORS CORPORATION,
et al.,
Défendants.

New York, November 11, 1976;
10.00 A.M.

Trial resumed.

- -

(Jury present.)

MR. PERSON: Mr. Cerota, please.

MORRIS (MOE) CEROTA, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PERSON:

Q Mr. Cerota, will you please state your address?

A Home address?

Q Yes.

A Landmark Apartments, Route 7 and 295, Cherry Hill, New Jersey.

Q Are you affiliated with a GM dealership?

A Yes, I am.

Q What is the name of that dealership?

A Cerota Chevrolet - Oldsmobile, Inc.

Q How long have you been affiliated with that?

A February 15, 1968.

Q What is your position with that dealership?

A Secretary-treasurer.

Q Are you also an owner?

A Yes.

Q Is your dealership financed in any way by General Motors?

A No. Let me qualify that. Floor planning for new vehicles, yes.

THE COURT: General Motors doesn't own part, any part of your company?

THE WITNESS: Right.

Q Do you remember speaking with me and my assistant about November 2, 1976?

A One day last week when you were there serving me with a subpoena, yes.

Q Right. And do you recall discussing the subpoena that I served on you?

A I don't quite understand what you mean discussing it.

Q Do you recall that I said it was all right not to produce any documents?

A Yes, I have that right here in my pocket.

Q I crossed out the place where the documents were.

A Right.

THE COURT: I think you are going to have to move back or do something. You are talking with your back to the jury, Mr. Person.

MR. PERSON: All right.

Q Do you recall stating to my assistant and myself that you were a friend of Frank Maiorana for a long time --

MR. KAPLAN: I object to the leading, and I don't see the relevance of any conversation with Mr. Person.

THE COURT: Sustained.

Q Do you recall stating to me that you would not jeopardize yourself with any testimony that you would give here today?

MR. KAPLAN: Objection. In effect, Mr. Person is getting to be a witness.

THE COURT: I don't understand this. Get

to the facts, and if there is any problem -- this has nothing to do with the case right now.

Q How long have you known Mr. Maiorana?

A I would say in the area of 20 to 30 years.

Q Do you recall any communications with Frank Maiorana concerning possible purchases of automobiles from Cerota Chevrolet-Olds?

A Not really, no. Not for the specific purchase of automobiles.

Q Do you recall Mr. Maiorana dropping in and visiting with you in your place of business?

A Yes, I do.

Q Was that about in 1968 or so?

A 1968, 1969. I mean, my recollection that far back, I couldn't be too specific.

Q Can you state what you discussed at that time? Do you have any recollection of what you discussed?

A No, hardly. I mean, we have discussed many facets of business and social activities and one thing or another. Nothing as far as specifics are concerned.

Q Was he there at all for any business reason?

MR. KAPLAN: Objection.

THE COURT: No. Overruled.

MR. KAPLAN: It goes to the operation of Mr. Maiorana's mind.

THE COURT: Overruled.

A Any business reason? At one time he came there and purchased a used car from me, but several days later he returned.

Specifically, to the best of my recollection, nothing further except that he did ask me whether or not any automobiles were available, et cetera, and at that time I was a small dealership and really had none that were available.

Q When you say no automobiles available, were you referring to new automobiles?

A Yes.

Q You do sell two types of automobiles?

A Chevrolet and Oldsmobile.

Q Were you referring to not having either Chevrolets or Oldsmobiles available?

A Available for sale at that time to other than my retail sales.

Q So and Mr. Maiorana had discussed the possibility of Nabcor purchasing other than on a retail basis?

MR. KAPLAN: I object to the leading and

characterizing the testimony. Why doesn't he let the witness say what happened?

THE COURT: Overruled.

A No, we had never really discussed Nabcor purchasing cars from me.

Q Did Mr. Maiorana tell you what type of business he was in?

A I knew what type of business he was in.

Q What did you know?

A Well, I know that he was selling franchises for so-called unauthorized new car dealerships.

THE COURT: No. Overruled.

MR. KAPLAN: It goes to the operation of Mr. Maiorana's mind.

THE COURT: Overruled.

A Any business reason? At one time he came there and purchased a used car from me, but several days later he returned.

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Q When you say no automobiles available, were you referring to new automobiles?

A Yes.

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A Chevrolet and Oldsmobile.

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A Available for sale at that time to other than my retail sales.

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characterizing the testimony. Why doesn't he let the witness say what happened?

THE COURT: Overruled.

A No, we had never really discussed Nabcor purchasing cars from me.

Q Did Mr. Maiorana tell you what type of business he was in?

A I knew what type of business he was in.

Q What did you know?

A Well, I know that he was selling franchises for so-called unauthorized new car dealerships.

Q Did you know that he was selling cars?

A That he personally?

Q That Nabcor or a Nabcor franchisee was selling cars?

A Presumably so, yes.

Q What is the name of your zone manager for Chevrolets back in 1969?

A His name was Rudy -- that's the only way I would know him -- Schmitdell, I believe.

Q And his first name?

A Rudy.

Q Was this for the Chevrolet zone?

A Yes.

Q Did that also include the Corvette zone? Is that part of the Chevrolet zone?

A That's part of the Chevrolet zone, yes.

Q Was he the zone manager for the whole zone for Chevrolet, including Corvette?

A For the Philadelphia zone area, yes.

MR. KAPLAN: We'll so stipulate.

Q Did you have a district manager from that zone who came in to visit you from time to time?

A Yes.

Q What was his name?

had good relationships with the zone and that you were told by that zone manager you would be in serious trouble if you would sell Nabcor cars?

A Definitely not.

Q Do you recall whether you said to Mr. Maiorana during the same conversation that you would deal with Nabcor but only by putting cars in the name of Nabcor's customers?

MR. KAPLAN: Objection. He just asked him whether he told Maiorana in the same conversation, your Honor, and so far we don't have a conversation.

THE COURT: The jury I think understands.

The only reason you can ask him about these alleged conversations with Frank Maiorana is for impeachment purposes. I don't think you have asked him directly any question about the title situation. I don't know what that has to do with any impeachment. I don't think you have even asked him about it.

Q Do you recall having any transactions with Nabcor?

A One I believe in an indirect sort of a way.

Q Can you describe that transaction, please?

A Well, the only reason I can mention it at this point, although it's real vague, is the fact that although my records have been burnt through a fire that I had in November of 1970 I can recall by way of a photocopy of a bill of sale -- not a bill of sale but an invoice -- that was made to Frank Stolarski or whatever the name may have been, out of Detroit, and paid for by check with Nabcor's check, although the circumstances surrounding it are vague.

Q Could you try to clear up someof that vagueness? Do you have any recollection of any part of the circumstances?

A Really I don't. I'm going back now seven and a half, eight years ago, whatever the case may be. That's several thousand automobiles and customers ago.

Q Do you recall the name Shaw Chevrolet?

A Not at all.

Q Do you recall the name Wamsler?

A No.

Q Leo Marcin?

A Not at all.

Q Mr. Econ?

A Not at all?

Q Is it customary for your dealership to put title to automobiles in the name of somebody other than the purchaser?

A No.

Q Was this transaction then with Mr. Stolarski unusual in that respect?

A Not necessarily if he were the purchaser.

Q Do you know where Mr. Stolarski lived at the time?

A Apparently from what I have been told Detroit.

Q Was Nabcor the company that ordered the car?

A Nabcor? I don't quite remember whether it was a prospect they had given me or whether it was a direct order.

MR. PERSON: Exhibit 650 for identification is offered in evidence.

MR. KAPLAN: No foundation, your Honor.

THE COURT: May I see it?

(Pause)

THE COURT: Whose signature is this?

MR. PERSON: Mr. Snyder.

MR. KAPLAN: I object only because there is no evidence so far that this witness ever saw it. There period.

THE COURT: Yes, we better do that, Mr. Person.

Q If you can describe what a fleet allotment was back in 1968 and 1969.

MR. KAPLAN: Excuse me, your Honor, may I have a voir dire on that?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KAPLAN:

Q Mr. Cerota, you became a Chevrolet Oldsmobile dealer on February 15, 1968?

A Correct.

Q Prior to that were you a new car dealer?

A No, sir.

Q Were you in the used car business?

A Yes.

Q Cerota Chevrolet-Oldsmobile did not do any significant fleet business at all in the years 1968 and 1969, is that true?

A Right.

MR. KAPLAN: I object on the ground that the witness isn't competent to testify.

BY MR. PERSON:

Q Have you spoken with Mr. Kaplan before?

A Yes.

Q Did you speak with him about what business you did on a fleet basis back in 1968 and 1969?

A No.

Q How much business did you do?

A I don't have any recollection, but it was insignificant because I was not fleet oriented and I didn't know anything, so to speak, about the business.

Q But did you ever have any fleet transactions?

A Yes, I did --

MR. KAPLAN: I object to the form. We need a definition at this point.

THE COURT: Let's be precise, Mr. Person.

Q Can you describe what a fleet transaction is back in 1968 and 1969 in your opinion?

MR. KAPLAN: I object.

THE COURT: What does his knowing have to do?

MR. PERSON: I am trying to --

THE COURT: Look, Mr. Person, there must be at least 5000 ways, any one of which would be perfectly satisfactory in this trial, to get the precise information before the Court and jury about allotments, fleet transactions or whatever you want to call them.

I think there were, if I recall, two

stipulations that were entered into at an earlier day in this trial discussing what a fleet certificate was and discussing what a fleet discount or rebate was, so that was some progress.

Then we have had some questions about the allotment picture. But they were asked of Mr. Dillon, who really ended up saying he didn't have toworry about it because allotments may exist but they are academic at times when cars are in abundant supply.

So that I think that I am concerned about, genuinely concerned about having a discussion of allotments back seven or eight years ago by someone who may not have really had much to do with it, when I am sure there are a lot of people who could be brought to this courthouse and who would know precisely everything that needs to be known about the allotment situation in 1968 and 1969.

MR. PERSON: I think it would be relevant to know what a dealer believed about the allotments.

THE COURT: Mr. Cerota, back in 1968 and 1969 were you concerned in your business with the subject of allotments?

THE WITNESS: No, not to the extent that I couldn't get the -- let me qualify that again. Not to the extent that I couldn't get the cars that were on an allotment basis, such as a Corvette.

THE COURT: In other words, you are saying that in the case of Corvettes there were allotment problems?

THE WITNESS: Scarcity, and, as a result, the dealer would only get whatever he really earned during the course of the year. If he sold two, hypothetically, then possibly you can get two in return again for resale. That is going back to the previous year.

THE COURT: In other words, you are saying that for a car in short supply the amount that you got in any year depended on what you sold the previous year?

THE WITNESS: Right.

MR. KAPLAN: Your Honor, if I may ask another question on voir dire?

VOIR DIRE EXAMINATION

BY MR. KAPLAN:

Q Mr. Cerota, during the last year or two did you ever request a fleet allotment from Chevrolet or Oldsmobile?

A Not up until the last four months, five months.

MR. KAPLAN: Thank you. I renew my objection on the ground that the man just is not competent to testify about fleet allotment in 1968 and 1969.

THE COURT: Back in 1968 or 1969 did you inform yourself or inquire or have to do with the subject of fleet allotments?

THE WITNESS: No.

THE COURT: You did not?

THE WITNESS: No. I had no reason to.

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THE COURT: I thought your question was about fleet allotment, wasn't it?

MR. PERSON: That it was, yes, your Honor.

THE COURT: I will sustain the objection to that.

BY MR. PERSON:

Q Do you have a leasing company?

A At present, yes.

Q Does the leasing company have a fleet certificate?

A Yes.

Q What is the meaning of the fleet certificate, according to what you understand?

MR. KAPLAN: Your Honor --

THE COURT: First we stipulated about that. In the second place, the questions about what the meaning is in 1976 are not necessarily relevant to what the situation was at the time in question.

MR. PERSON: The stipulation that we made, your Honor, was a stipulation that General Motors has information relating to that fleet certificate. That doesn't mean --

THE COURT: In any event, the question about what a fleet certificate means in 1976 is irrelevant.

MR. PERSON: It is evidence of what it meant before and it is also --

THE COURT: There are lots of ways to get it. I sustained the objection and I don't want to hear any argument about it.

MR. PERSON: I would like to make an offer of proof with respect to it.

THE COURT: You can make it later. Nobody is preventing you from asking a relevant question about the time at issue from a witness who has knowledge of it.

MR. PERSON: But, your Honor, I think that the present status of the fleet certificate --

THE COURT: I just disagree and I am ruling against you. Go ahead.

(Pause.)

Q Do you recall telling Mr. Maiorana that GM told you not to sell cars to Nabcor?

A GM never told me anythng of that nature.

Q Do you recall telling Mr. Maiorana you would sell cars to Nabcor but only if you put them in the customer's name?

A No, I don't recall having said that.

MR. PERSON: No further questions.

$87:CROSS-EXAMINATION

BY MR. KAPLAN:

Q Mr. Cerota, I have only one question for you: Until counsel for General Motors contacted you within the last couple of weeks, has anybody at General Motors ever said so much as a single word to you on the subject of Nabcor?

A No.

MR. KAPLAN: No further questions.

THE COURT: You may step down.

Call your next witness.

(Witness excused)

MR. PERSON: Mr. Robert Murray.

you could either bring it out in questioning or you can stipulate.

MR. KAPLAN: It's up to Mr. Person. I would be delighted to describe the procedure.

THE COURT: I was mystified by that type of letter. Why don't you go directly --

MR. PERSON: I will defer to Mr. Kaplan.

MR. KAPLAN: I describe to you the procedure that was used by the Cadillac zone office in Philadelphia which covered Mr. Murray's dealership in making allotments with respect to leasing and rental companies in the model years '66 and '67. The procedure was as follows:

Each summer, before the start of the model year, Cadillac would request each dealer to submit his estimate of the number of cars which he would require for sale to leasing companies or rental companies for the following year.

He was requested further to support each of those requests with a letter from the rental or leasing company stating its anticipated requirements of Cadillacs for the coming year.

This would occur, as I say, in the summer before the model came out, so it would occur about

June or July of 1966 with respect to the 1967 models.

In September or October the Cadillac zone office would transmit to the dealer a schedule listing how many rental and leasing allotment cars they would get each month for each customer. That was his fleet allotment for the year ordinarily.

I know of no exceptions; that allotment was never changed during the model year. The allotment of rental and leasing cars was typically 10 to 20 per cent of the total number requested by the dealer. The dealer was free to sell other automobiles out of regular stock to the rental and leasing companies and typically did so.

I think it would be developed with this witness that most of the cars that Cadillac sold to the rental and leasing companies came not from this allotment but from the regular inventory.

MR. PERSON: Would you stipulate that Nabcor was not entitled to receive a flèet allotment?

MR. KAPLAN: No, sir. The issue never arose.

THE COURT: Are you stipulating as far as Mr. Kaplan stated?

MR. PERSON: He stated that for leasing

and rental companies there was a fleet allotment. I didn't hear what the fleet allotment was towards Nabcor.

MR. KAPLAN: I can answer. Since Nabcor was not a rental or leasing company it was not eligible for that allotment at that time. Furthermore, there was only one request by Nabcor. It came well after the model year started and General Motors never acted upon it.

THE COURT: Will you stipulate to that?

MR. PERSON: I can't stipulate to the last part.

THE COURT: The part that Mr. Kaplan recited before, Mr. Kaplan's recital number one, that's stipulated and, of course, there are other facts to be developed in the evidence.

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Q Mr. Murray, did you listen to Mr. Kaplan's statement?

A Yes.

Q Is that what you understood the policy at General Motors to be?

A Yes, sir, that is true.

Q Back in 1966?

A Yes.

Q Do you recall you were going to state your first communication that you recall with Nabcor? You mentioned this letter of March 15, 1966.

Did you speak personally with Frank Maiorana, who signed that letter?

A I believe I spoke to him up in Tuckahoe at one time and I believe I spoke to him at Philadelphia, where he was in the Philadelphia area one time.

Q You went there to Tuckahoe yourself?

A Yes.

Q Tuckahoe, New York, up near Yonkers or Westchester?

A Yes.

Q Was it the Westchester Town House?

A A motel, I believe it was in.

Q Nabcor's office there?

A Yes, sir.

Q Was that the first or second time you visited Nabcor?

A To my recollection, first.

Q Did you visit Nabcor at some other time?

A I believe, I am not sure, but I think I was down once in the Philadelphia area, Langhorn or wherever he was.

Q Jenkintown?

A Yes. I believe once, but I can't swear to that.

Q Can you recall how Nabcor described its business to you or how Frank Maiorana described the Nabcor business?

MR. KAPLAN: Your Honor, can we just pin it down when, because we already see from one of the exhibits there was a suggestion that it was a leasing company.

A I thought they were a leasing company.

Q Do you recall how you got that suggestion, that idea?

A From this letter of March 15, 1966.

Q Was it your practice, as you have stipulated, for you to make requests for letters to be sent to you?

A Yes, sir.

Q Do you recall having requested a letter in any particular form?

A No particular form, no.

Q We stipulated there was a practice of a particular form of letter to be sent.

THE COURT: I may be confused by form. Form could mean what margins you use.

Q Do you tell the persons who are going to submit, back in 1966,did you advise the people who are going to submit letters requesting fleet allotment, did you talk with them about the contents of the letter before it was sent?

A It is possible, but I couldn't tell them how to write a letter.

THE COURT: The point is, these letters were letters that you were going to submit to the zone?

THE WITNESS: Right.

THE COURT: Did you have to tell the people what they should say in those letters, so you would have something proper for your use to give to the zone?

THE WITNESS: Yes, we would, sometimes. Sometimes we would.

THE COURT: If they didn't know already you would tell them, right?

THE WITNESS: What your needs are, and you are leasing and you want to apply for cars, tell them what to write. Tell them that you are a leasing company and applying for cars, how to apply, and we will put a copy of the letter to the Cadillac asking that this request be honored.

THE COURT: All right.

BY MR. PERSON:

Q If a letter came which was not satisfactory, would you communicate with the person who sent the letter and give them instructions on what to write that was satisfactory to you?

A I don't think so. I don't think I would do that.

MR. PERSON: I would like to read Exhibit 449 in evidence. It is dated --

MR.KAPLAN: I thought 449 was in 1962.

MR. PERSON: It shows where he corrected somebody's letter already.

MR. KAPLAN: Four years before, entirely irrelevant.

THE COURT: You needed certain information to document your allotment request at General Motors?

THE WITNESS: Exactly right.

THE COURT: If somebody sent in a letter and they hadn't given the information that you needed to give to General Motors, you might go back to them and say, "Look, would you revise your letter because I have to document the request"?

THE WITNESS: Yes.

THE COURT: If they wrote you a letter and didn't put the number of cars or something, then you would go back and ask them for a new letter, is that right?

THE WITNESS: Yes, sir.

THE COURT: If they wrote the letter that had the requisite information or knew already you wouldn't have to even talk to them about it?

THE WITNESS: That is correct.

THE COURT: What is the information that you generally had to have to give to General Motors for this documenting?

THE WITNESS: The most important thing was the number of units they would require and that they were a leasing company, using them for leasing.

THE COURT: The number of units?

THE WITNESS: They would require for the model year, and they were a leasing company, yes.

THE COURT: Because there was an allotment specifically for leasing and rental companies?

THE WITNESS: Yes, sir, by name.

THE COURT: What do you mean by name?

THE WITNESS: The Cadillac allotment to whoever they would come to, allotted to this particular company.

THE COURT: You are saying specifically for rental and leasing companies?

THE WITNESS: Yes, sir.

BY MR. PERSON:

Q And a specific company?

A Yes.

Q Would they need a fleet number?

A I don't know about fleet numbers, sir.

Q But you could not get an allotment for resellers of cars, isn't that the fact, back in 1966?

MR. KAPLAN: So stipulated.

Q You knew that?

A I didn't hear the question.

Q You knew back in 1966 if you submitted a request for a fleet allotment for a company that was reselling cars that you would not be able to get a fleet allotment, isn't that correct?

A Yes, I guess. I don't know, I never submitted any that was reselling.

THE COURT: I just want to verge on some confusion. You used the term "fleet allotment," that was not a term that he used.

Maybe he would use it, but as I understand the stipulation was strictly for --

MR. KAPLAN: Rental and leasing, that is correct, your Honor.

THE COURT: Now, we had the term "fleet" used. I am just going to ask you something and I want to be very precise.

BY THE COURT:

Q Was this allotment called a fleet allotment? Was it spoken of as a fleet allotment? Was that a term used in connection with this allotment?

A No, sir, but it is confusing. We always had a leasing allotment.

Q Is that the way you spoke of it as a leasing allotment?

A Yes, sir.

Q You didn't speak of it as a fleet allotment? I don't want to split hairs.

A It is possible we used the term, but it is confusing. We had an allotment in our business.

Q This was a leasing allotment?

A We can't do anything with fleets. We have no way to get a fleet certificate or anything.

Q But the thing I want to get at is this: a company might buy a fleet of cars?

A Yes, sir.

Q In a kind of layman's sense, but not in the leasing-rental business?

A Yes, sir.

Q That could be New York Telephone or Con Ed or something like that?

A Yes, sir.

Q Now, was there any allotment that you dealt with back at that time that related to other kinds of so-called fleet buyers other than leasing companies?

A That was all, just leasing companies is the only one we dealt with.

We never sold to so-called fleets of cars to any company.

Q This allotment that you got from General Motors related strictly to the leasing companies?

A Yes, sir.

Q Not to other types of fleet purchasers like Con Ed or New York Telephone or the Federal Government or something like that, right?

A Yes, sir.

MR. PERSON: I think Mr. Kaplan will stipulate that the allotment is applicable only to leasing companies and rental car companies or fleet users such as A T & T and other companies registering cars?

2 MR. KAPLAN: During the period with which we are concerned, it was rental and leasing allotments, and by and large so referred to in General Motors?

THE COURT: This is the allotment for Cadillacs?

MR. KAPLAN: Cadillacs, and I am glad you thought to draw the distinction. It is another ballgame for other divisions.

THE COURT:We now have a witness on the stand who is from a Cadillac dealer, I understand.

MR. PERSON: Right.

THE COURT: Who is talking about his car business, and you are not talking about Chevrolet or Willys?

THE WITNESS: I don't know anything about them.

THE COURT: All right.

BY MR. PERSON:

Q You are unaware, then, that -- you are testifying that there was no fleet allotment for a company going to purchase the car and use the car in its own business, such as A T & T, and register the car in its own name?

A Well, you mean am I unaware of it?

Q Your testimony is that the allotment that you have been talking about is one that applied, as far as you know, only to leasing companies and rental companies back in 1966?

A Yes.

Q And that you were unaware whether there was --

A I wasn't unaware of it.

Q You knew there was no allotment at all, no fleet allotment for a company that would use the car in its own business such as A T & T or some other company that you called today a fleet user?

A I don't know, because I never had any. I don't know.

MR. PERSON: I mark as 653 for identification --

at all.

MR. PERSON: The log indicates that there were 44 orders from September 15, 1966 through 1-11-67.

MR. KAPLAN: Rather than dispute it here, if Mr. Person has a list I'll look at it at lunch and we'll thrash it out.

MR. PERSON: You don't have substantially the same information?

MR. KAPLAN: I didn't compile that.

MR. PERSON: Why not?

THE COURT: Were there 44 orders taken between 9-66 and 1-67?

THE WITNESS: I have no way of knowing.

Q Who was the person in your organization that would have handled the receipt of any orders such as that from Nabcor?

A Mrs. Hartsough may know, but I can't vouch for her.

Q Was your dealership turning down any orders, any retail orders, during the period September 1966 to January 1967?

A I don't think we turned any down, but there was probably a waiting period for any particular car.

Q That is a waiting period for retail?

A Yes.

Q Was there any waiting period for fleet orders during that period?

A I would assume so.

Q The same length of time?

A I would assume there was a waiting period for fleet too.

Q How long a period?

A Frankly, I could not tell you how long it would be. I can't tell you what the waiting period would be. We might have given one out of our stock and given it to a leasing company and wait for it to come in.

Q Did you submit every order that you had accepted as far as you can recall during the period of September '66 through January '67?

A Submit them to whom?

Q General Motors.

A Retail orders?

Q Any orders.

A No, sir.

Q There were at least some orders you would not submit; is that correct?

A I would assume, yes.

Q For what reason?

A Well, if a company was buying from us that we didn't think was going to use them in the right way we would not request them from General Motors.

Q What kind of way were you afraid the company might use the cars if they bought them?

A If they bought them for resale?

Q Yes.

A That's it.

Q Were you afraid of that?

A Yes.

Q For what reason?

A We could not stay in business if they were permitted to do that.

Q So any orders you took from a reseller you would not have sent through to the factory for whatever reason?

A I didn't want to sell these people.

Q So you can recall taking any orders and not wanting to sell them?

A I would assume, yes, but I'm not sure.

Q It does not make sense. Why not just reject the order?

A That's what I did. I rejected it.

Q You rejected 44 orders?

A I don't know how many they sent in, sir. I have no knowledge of it.

Q Do you have an approximation of how many?

A No, sir.

Q Do you recall if any orders were allowed to accumulate?

A No, sir.

Q Do you have any recollection ofthese orders, just several of them?

A I would assume there were some but I have no honest recollection of them.

THE COURT: We are talking in vague terms. You would assume there weresome of what?

THE WITNESS: Orders that were not sent in to the factory because we knew they could not be filled.

THE COURT: Orders from Nabcor?

THE WITNESS: Anyone that we felt was not qualified as a leasing company. Retail customers, we would send our orders in.

THE COURT: Do you have any specific recollection of any attempts by Nabcor to get cars and you turning those orders down or not sending them on to the factory? Do you have any recollection of that?

A I'm trying to reconstruct. I would guess there were orders from Nabcor that were not submitted to the factory , yes.

MR. KAPLAN: Mr. Murray, are you guessing or do you remember?

THE WITNESS: I am guessing.

MR. KAPLAN: I move to strike.

THE COURT: I'll strike that.

I want you to search your recollection. Assumptions and guesses and so forth are not evidence. Search your recollection.

THE WITNESS: To my recollection, no, sir, but they would be in those files that the Justice Department has.

THE COURT: Why in those files?

THE WITNESS: Becasue they took them from us -- if we had any.

THE COURT: I'm puzzled. Let me see the list with respect to the receipt.

(Pause)

THE COURT: Where it says four folders containing information on sales to leasing companies for 1966, 1967 and 1968?

THE WITNESS: Yes, sir. They have those.

THE COURT: The thing that's a little confusing in my mind is this: We now know that Nabcor was not a leasing company, but are you saying that you thought of Nabcor as a leasing company back then?

THE WITNESS: Yes, sir. Originally, yes, sir.

THE COURT: Because of that letter from Mr. Maiorana where he said they were a leasing company?

THE WITNESS: Yes.

THE COURT: So you believed that any documents about orders or sales to Nabcor would be included in this item 6 on the receipt, folders containing information on sales to leasing companies?

THE WITNESS: Yes, sir.

THE COURT: That's nice to know, that they're in the hands of the Justice Department.

MR. PERSON: We'll try to extract them. I have made two demands.

THE COURT: When did you make those?

MR. PERSON: Under the Freedom of Information Act --

A Mercer Sales & Leasing.

Q Is that a subsidiary of Colonial?

A No, sir. It's owned by Colonial but it's not a subsidiary.

Q Back in 1973 I believe you told us that it was a subsidiary of Colonial. What is the relationship?

A Mercer Sales & Leasing was a conduit company that we put into operation.

Q Explain what the conduit refers to.

MR. KAPLAN: I object. May we have a side bar?

THE COURT: Yes.

(At the bench)

MR. KAPLAN: We are over again to the title to the two Cadillacs that Nabcor bought. It has nothing to do with this case at all. They got the cars.

THE COURT: What is the problem?

MR. PERSON: Number one, there may be documents in Mercer Leasing relating to Nabcor that have not been produced to us or to the Justice Department.

Secondly, the use of this subsidiary to

transfer title to Nabcor twice and to other companies is part of a territorial exclusive to prevent GMC finding out they were selling cars outside their terrritory.

THE COURT: What is it you are trying to elicit basically?

MR. PERSON: That Colonial was trying to hide from General Motors the fact that it selling cars to Nabcor and anywhere else; they were selling outside of their area of sales responsibility as defined in their franchise agreement. The method of evaluation of a dealer's performance relates to the number of units registered in the area of sales responsibility, and we had testimony previously by Miss Hartsough that she had used Mercer as a conduit for the title to go to Nabcor in order to have the registration appear in this area, in her area of sales responsibility.

THE COURT: What is the antitrust problem about that?

MR. PERSON: This is a restraint upon the dealer's ability to sell cars, where they need to hide the fact that they're selling cars to Nabcor.

THE COURT: The evaluation relates to the allotment?

MR. PERSON: The allotment is tied into the dealer's performance.

THE COURT: And the performance is measured by sales in the area?

MR. PERSON: Yes. So sales to Nabcor, if they were not registered in the dealer's own area -- the sales to Nabcor would appear elsewhere and would not appear in the registration for this dealership.

THE COURT: Put that aside for a minute. Go back to the concealment. How many cars did Colonial sell to Nabcor?

MR. PERSON: Two and possibly a third. I found some vague reference to a third. There is two I am aware of.

THE COURT: Before December 1970 how many did they sell?

MR. PERSON: One or possibly two, back in April and May of 1966.

THE COURT: You claim there were 44 orders that were not even filled, right?

MR. PERSON: Right.

THE COURT: There was one and possibly two orders that were filled and you want to show that those orders that were filled, that title --

MR. PERSON: Two times they had title.

MR. KAPLAN: As a matter of fact, there are several answers to this. She testified that she did pass the registration to the motor vehicle bureau through Mercer. Nabcor was the purchaser.

THE COURT: Have you seen those?

MR. PERSON: She did testify to that.

MR. KAPLAN: I don't have the cards, unfortunately.

THE COURT: Are they in those files?

MR. KAPLAN: My belief is that there is nothing in the files. There's no reason --

THE COURT: When you are going back six years -- have you got copies of orders?

MR. PERSON: I've got the folders --

THE COURT: It's very difficult to do into this thing. We don't have the dealer's records.

MR. KAPLAN: Another point. Mr. Person is now essentially arguing that there was some sort of a territorial restraint on the dealer. That claim has never been pleaded. It has never been raised before.

MR. PERSON: Constantly.

MR. KAPLAN: Furthermore, I can cite you

cases for much of the rest of today which would show the use of the primary area of selling responsibility, evaluation of --

THE COURT: That to me is a matter of law. That's not a valid thing. I won't permit it to be argued. There is no reason to go into the evidence on that.

I do think Mr. Person is entitled to put in whatever evidence he can about the refusals to deal and the alleged concealment of Nabcor. If you want to pursue that you can.

Let me ask you this: Do you have copies of the Nabcor purchase order forms addressed to Colonial Cadillac for your 44 cars?

MR. PERSON: I have been looking through the deal folders for them and I don't see him. I have found -- I have these deal folders and I have entries in the log and I have a compilation of -- I probably have one of those purchase order forms for 1008B back in January of 1967. But prior to that time with the deal folders that we have together with the log entries --

THE COURT: Do you have the purchase order forms? If this was a copy or a carbon copy of

A Yes, sir.

THE COURT: You haven't seen these two 1966 documents?

THE WITNESS: No, sir, I never have.

Q Could you take a look at this Exhibit 655, and I would like to ask you if the information onthat order form would be sufficient for Colonial back in 1966 to make an order for a car of that type as described to General Motors?

A Yes, it is.

Q You don't recall any orders from Nabcor on forms similar to this at any time?

A No, sir, I don't. I do not.

Q Do you recall how many vehicles you were allotted to sell at retail in 1966?

MR. KAPLAN: I object.

THE COURT: Sustained.

MR. PERSON: I think it is relevant, your Honor.

THE COURT: I sustain the objection as to form.

MR. PERSON: All right. I have Exhibit No. 1.

MR. KAPLAN: What do you claim it is, sir, on the list of numbers?

MR. PERSON: Exhibit 276 for identification is a certificate of ownership of a motor vehicle dated May 2, 1966.

MR. KAPLAN: I object on the ground of relevance, your Honor.

THE COURT: May I see it?

(Handed to Court.)

THE COURT: You will have to lay a foundation for this.

Q Mr. Murray, would youplease take a look at Exhibit 276 and the other side of it?

A I am trying to see what model it is.

THE COURT: You have to keep your voices up. Everybody has to hear.

Q Can you state what Exhibit 276 is?

A This is a certificate of origin, I think -- no, the title for the State of New Jersey.

Q Is that for Mercer Sales & Leasing?

A Yes.

Q Is this the Mercer we referred to before?

A Yes.

Q Is this a copy of an actual document that transferred title from Mercer to Nabcor of a vehicle that Colonial sold to Nabcor?

A I wouldn't know that unless Nabcor signed it, and I see no signature. I assume --

THE COURT: Don't assume.

A I don't know.

THE COURT: Is Nabcor referred to on there?

Q It is referred to on the back, Nabcor, Inc., at the top?

A Yes.

Q This is Mildred Hartsough's signature?

A Yes.

Q She is employed as a title clerk in Colonial Cadillac, or, rather, was during that period?

A Yes.

BY THE COURT:

Q So it transferred title from Mercer Leasing to Nabcor?

A Yes, sir.

MR. PERSON: I offer it in evidence.

THE COURT: Received.

MR. KAPLAN: For the record, your Honor, note my objection.

THE COURT: Received.

xx (Plaintiffs' Exhibit 276 for identification received in evidence.)

THE COURT: Wait a minute, though.

MR.KAPLAN: We have a time problem on this, your Honor.

THE COURT: Come up, please.

(At the side bar.)

THE COURT: This is outside the limitation period.

MR. PERSON: It shows a course of dealing and they did it again.

MR. KAPLAN: One car is not a course of dealing.

MR. PERSON: It repeated the events in question.

THE COURT: What events in question? The damage period begins December 10.

MR. PERSON: Failure to deliver automobiles to Nabcor that were ordered by Nabcor.

MR. KAPLAN: That is not even clear.

THE COURT: You don't have any orders.

MR. PERSON: There were these two others here and others as well in the log indicating, and the dealer folder.

MR. KAPLAN: Almost all are before December, 1966, also.

THE COURT: Any orders sent in after December

10?

MR. PERSON: 453 indicates orders that were after January 6, 1967.

THE COURT: How many orders to Colonial after?

MR. PERSON: Were already ordered by that date from the records of Nabcor.

THE COURT: What acts were done by Colonial that you claim after December 10, 1966?

MR. PERSON: Failure to deliver.

THE COURT: How many cars?

MR. PERSON: I would have to go back and see, but a substantial number of the 44. There were cancellations of some before the date December 10, but other orders still on subsequent to December 10.

Now this thing indicates that Nabcor still thought that these cars were ordered by Nabcor from Colonial as of that date. That is a substantial number of the 44 minus some cancellations from customers.

2 **MR. KAPLAN:** This whole Mercer business is before the limitation or after the limitation period.

MR. PERSON: But it shows that for what we have discussed previously.

THE COURT: The real question is was there any illegal refusal to deal within the damage period.

That is not at all clear to me, according to what you say. There aren't any records. This is another one of these kind of messy pieces.

Perhaps we ought to take our luncheon break and I hope you can get this thing straightened out.

(In open court.)

THE COURT: Ladies and gentlemen, we will take our luncheon recess a little earlier now and recess until 2 o'clock.

(The jury left the courtroom.)

THE COURT: I would think that with the damage period cutting off at December 10, 1966, you would have to be involved in something like precise facts about what happened.

Now, the suit is against General Motors, not against Colonial.

MR. PERSON: Correct.

THE COURT: And the question is what did General Motors do vis-a-vis Colonial Cadillac that occurred after December 10, 1966.

I don't know if I am even putting it the right way, but it is up to you to put it the right way and get the facts organized, so that there is an intelligible claim that legally falls within the damage period that relates to Colonial Cadillac.

Now, I don't know what that claim would be, but that is our problem in general. If you are going to go into a lot of proof about some intent to conceal the transaction back in May of 1966, and what the reasons for that were and whether General Motors had anything to do with that, that could be extremely prejudicial and misleading to the jury unless there was some conduct of General Motors after December 10.

What do you contend General Motors did vis-a-vis Colonial Cadillac and when?

MR. PERSON: We had orders that, 10 of those --

THE COURT: What did General Motors do?

MR. PERSON: General Motors would not give the cars. We had 10 of 44 orders --

THE COURT: What do you mean General Motors wouldn't give the cars? How do you know?

MR. PERSON: We didn't get the cars.

MR. KLEINBARD: That is a far cry.

THE COURT: Is this a situation where you had any information as to what General Motors did or said?

MR. PERSON: We don't have any direct communications with General Motors on this, no.

THE COURT: Have you taken the deposition of Mr. Murray or Miss Hartsough and asked if they had any communications with General Motors or what they did with General Motors, or if they were given any orders or hints or any threats?

MR. PERSON: No, we have not. We had the hearing.

THE COURT: That didn't prevent you from taking a deposition.

MR. KAPLAN: I think it was all answered at the hearing. The simple fact is that Mr. Murray testified at that hearing that General Motors never told him not to sell, and that is at page 69 of the transcript of March 19, 1973.

I believe if he was questioned by Mr. Person now he would find that apart from the letter to Mr. DuPuis at General Motors in April, 1966, to which he recalled no response, he never had any communications with General Motors on the subject of Nabcor.

THE COURT: Why was this title put in the name of Mercer?

THE WITNESS: Cadillacs are on allotment, sir, and they allot us so many Cadillacs to penetrate our zone of influence, according to the selling agreement.

So the more cars we register in our zone of influence, the more cars we can get. So we register them in the name of Mercer Sales & Leasing, so they would show under the registration in our zone of influence and we would in turn get more cars.

THE COURT: To conceal from General Motors that you were selling to Nabcor?

THE WITNESS: Oh, no.

THE COURT: In a way you were.

THE WITNESS: But not specifically Nabcor. We do a great number.

THE COURT: Was that because of any belief that General Motors would disapprove of Nabcor getting the cars?

THE WITNESS: No.

THE COURT: You did this for other transactions, right?

THE WITNESS: Yes, sir. Most of our leasing deals would go this way.

THE COURT: To Mercer and then to the company?

THE WITNESS: Yes.

THE COURT: Didn't General Motors know that Mercer was your company?

THE WITNESS: I would assume they did, but I don't know for a fact.

BY MR. PERSON:

Q Wasn't this for a sale for a first registration outside of your zone of influence?

A Yes.

Q And Nabcor was selling to people that were outside of your zone of influence?

A We were trying to get registrations for sales in our zone of influence. We didn't care about Nabcor being out of the zone.

Q So long as you did go through Mercer, it would first appear in your zone?

A Originally, yes.

Q You lost the retail allotment to the extent that you had sales first registered outside of your zone, correct?

A No. General Motors didn't tell us where to sell, but allotted the cars by the high price group and percentage of the high price group.

That is, the high price group General Motors allotted us cars so that we can penetrate that market orderly, and that is the way cars are allotted.

Q You plan to maximize your retail allotment?

A Yes.

Q Nabcor first registered these cars outside of your area, that would decrease your allotment?

A Yes, sir. I don't know whether it would.

Q But you were afraid of that?

THE COURT: It would not build up the record of penetration of your zone that was going to be used by General Motors in figuring future allotments?

THE WITNESS: That is correct.

THE COURT: All right.

THE WITNESS: That was the sole purpose.

THE COURT: I will tell you, Mr. Person, over lunch try to get as precise as you can as to what you claim these 44 cars when they were ordered --

MR. PERSON: I have the specific dates all set forth before me here, your Honor.

THE COURT: Go over that with Mr. Kaplan. Have you got 44 cars down?

MR. PERSON: I have 43.

THE COURT: How many were ordered before December 10, 1966?

MR. PERSON: All but 10.

THE COURT: Now, you would say there were 10 orders made to Colonial after December, 1966, and not filled?

MR. PERSON: And there were others pending.

THE COURT: Others pending, and we won't get too precise about what is meant by pending, but I get your point.

Your argument is that the result of the alleged General Motors conspiratorial activities were felt in some degree, at least 10 cars, and you would argue substantially more after December 10, 1966?

MR. PERSON: Correct.

THE COURT: What is the result as far as the statute of limitations? How do you apply it here?

MR. PERSON: Well, I would say so long as the cars were still on order, that there was a continuing effect of a conspiracy, so there is no limiting problem, no statute of limitation problems.

Insofar as orders cancelled before the cutoff date, I would say there are major problems from the damage standpoint.

THE COURT: Just roughly speaking, I think that is probably right. In other words, if there were damages felt during the damage period that stem from General Motors, this conspiracy, and of course Mr. Person contends the conspiracy continued well into the damage period, then I think that is roughly speaking the way we will handle it.

So I think you are entitled to show what you contend is this whole course of conduct by Colonial Cadillac and General Motors will have to respond.

MR. KAPLAN: Please note my objection.

THE COURT: All right.

(Luncheon recess to 2.00 P.M.)

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pgrl

:AFTERNOON SESSION
2:10 p.m.

(In open court; jury present)

ROBERT MURRAY resumed.

DIRECT EXAMINATION CONTINUED

BY MR. PERSON:

Q Mr. Murray, can you tell me how you conveyed the title from Colonial Cadillac to Mercer?

A Well, when we get a new car in we get a C of O, a certificate of origin, and we submit that to the State of New Jersey, who in turn issues a title.

Q In other words, the Mercer Company became the registered owner of the vehicle that Nabcor bought from Colonial?

A Yes.

Q That occurred on or about May 3, 1966?

A I don't have the serial number of the one we sold but I assume that's it. I have no way of identifying it. We did sell you a car at that time.

MR. PERSON: I offer Exhibit 279 into evidence.

MR. KAPLAN: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 279 was received in evidence)

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Q 279 in evidence is what? Can you identify that?

A I can identify that.

Q Do you see the serial number, the last five digits?

THE COURT: What is it?

THE WITNESS: This is an order that we sold to Nabcor, FK125. We wold that on 4-8-66.

Q The serial number on this Exhibit 279, the last five digits of the serial number --

A Here it is.

Q -- 10067, that's the same as the last five digits on this title?

A Right.

Q Exhibit 276.

A Right.

Q When this car was first registered by Mercer in the State of New Jersey, Mercer became the first purchaser of the car?

A As far as I know, yes, sir.

Q In that case do you recall what the warranty was for 1966 Cadillacs? Do you recall whether or not there were any limitations on the right of a subsequent purchaser to obtain any warranty?

MR. KAPLAN: Objection.

A I don't know.

MR. KAPLAN: I object on relavance and as to lack of foundation.

THE COURT: I'll allow it. Overruled.

Q Did your dealership service Cadillacs as well as sell them?

A Yes, sir.

Q You handled warranty claims for Cadillacs that were sold by your company?

A Yes, sir.

Q And also you would handle warranty claims for Cadillacs that had been sold by other Cadillac dealerships?

A Yes.

Q Can you recall whether there were any limitations at all on the part of a second owner with respect to obtaining warranty work which would be paid for it by the factory?

MR. KAPLAN: I renew the objection on the ground that there is no showing that the warranty on this car was not made out to Nabcor.Absent such a showing these questions are totally irrelevant. There is absolutely nothing in the record that suggests that the State of New Jersey title has anything to do with warranty.

MR. PERSON: The warranty at the factory itself, it talks about --

THE COURT: If there is a question, again, dealing in generalities about second owners and third owners or first owners, that doesn't particularly help.

MR. PERSON: All I'm doing is asking if he has any information. If he doesn't have that information --

THE COURT: Do you have any information or any documents to show how the warranty was contracted for in this case?

THE WITNESS: No, sir. I have not.

Q What was the purpose in having title to Nabcor go through Mercer Leasing?

A As I said before --

THE COURT: The jury was not here.

THE WITNESS: Oh.

The purpose in putting it through Mercer Sales & Leasing was to register more cars in our zone of influence, and we are alloted cars through our market penetration in our zone of influence. If registered through the leasing company it gave us registration in our zone of influence.

Q If Nabcor had received title directly from Colonial and registered the car in your zone of influence, the result would have been the same?

A They could not do it, I don't think.

Q Nabcor could not register a car?

A In our zone of influence, I don't think.

Q As a first purchaser?

A I don't know. I don't know.

Q Can anybody who buys a car from you register it in your area?

A First of all, we get title. We have to get the title from the certificate of origin, and when we get the title we place the purchaser's name on the certificate of title.

Q So that in this case you did not actually place the real purchaser on that title, did you?

A We placed Nabcor who was the purchaser.

Q Didn't you place Mercer?

A On the first one, yes.

Q So that Nabcor then may have registered it or may not have, and you don't know?

A That's right.

Q You say that Colonial did this through Mercer Leasing because of some way it affected an allotment. Can you explain what you mean by that, please?

A Cadillac Motorcar Division allots us cars to our market penetration.

Q Explain that.

A Our zone of influence --

Q Explain what your zone of influence is.

A It's defined in the signed agreement as to what our zone of influence is. It does not mean that we are not permitted to sell outside but it gives us the responsibility of selling cars in that particular zone of influence as outlined by name.

Q Your dealership then and now has been located in Trenton, is that correct?

A Yes, sir.

Q Trenton, New Jersey?

A Yes.

Q When you say "zone of influence," you are talking about some area surrounding your dealership?

A Yes.

Q It may be referred to as an area of sales responsibility?

A Yes, sir.

Q And you call it now a zone of influence?

A Yes.

Q If you sell a car through Colonial and if the car appears registered by the first purchaser in your area of influence, in your area of sales responsibility, this would tend to maximize the number of automobiles that you would be able to obtain through the allotment from General Motors and also if the car you sell is not registered at the first time in your area this would tend to reduce the number of cars that you could get from General Motors in subsequent periods, is that correct?

A Yes.

THE COURT: I think we have the attorney from the antitrust division here now.

May I see that receipt and I'll ask the lawyers to come up.

(At the bench)

THE COURT: We are trying a civil antitrust case and this is a situation where back in '68, thereabouts, this plaintiff was writing a number of complaints to the Department of Justice and apparently the Department of Justice asked for some documents of various parties. Unfortunately, the documents may be material in this lititation .

I'm particularly referring to a company called Colonial Cadillac, Trenton, New Jersey, and Donald Flexner of the Justice Department gave a receipt of May 20, 1969 for some documents. I don't understand why they were never returned. I don't know why you just keep documents.

MR. FORESTER: Do you know whether Colonial ever requested the return of the documents?

THE COURT: I suppose you would have a regular process for returning documents.

MR. FORESTER: That's the general practice, to return them without a request.

THE COURT: I would think so.

MR. FORESTER: Was there a grand jury that was impaneled?

MR. KAPLAN: I believe this went pursuant to a grand jury subpoena out of the western district of New York?

THE COURT: Apparently both sides here have written the department under the Freedom of

Information Act, and I think the plaintiffs have gotten some documents but, as I understand it, these have not turned up.

I would appreciate your trying to put a rush on this and have the people down there in the department find these documents. They must be somewhere.

MR. FORESTER: I have spoken with the chief of the New York office who is in Washington today. He's informed me that he has contacted Mr. Flexner.

THE COURT: Is he still there?

MR. FORESTER: He's the chief of the regulatory reform unit and he's personally undertaking to locate the document as best as I would be able to describe them. If I may copy this --

THE COURT: Go back and copy this and give it back to us, because this isthe only thing the witness has.

MR. FORESTER: If I have some notes on it --

MR. PERSON: Here are notes on the conversation there was with several people.

MR. FORESTER: May I get the names of the attorneys?

MR. PERSON: My assistant has --

MR. KAPLAN: I want to be clear about this. Both sides requested documents relating to somebody called Nabcor. It is my belief that the documents referred to in this request have nothing to do with Nabcor and therefore would not have turned up on either request.

But I made a request and this gentleman made a request.

THE COURT: In other words, nobody is blaming the Department of Justice for anything, but if you can get those quickly they might be of use.

MR. FORESTER: Are these documents to be returned to Colonial? Is that what you are requesting, or should they be produced to the Court?

THE COURT: The gentleman on the witness stand is the vice president of Colonial.

MR. FORESTER: I take it they have no objection to their documents being produced?

THE COURT: I don't think they can because they're subject to subpoena. Mr. Murray was subpoenaed?

MR. PERSON: Yes.

THE COURT: I'm directing that the documents be produced here. Certainly they will be returned to

Colonial.

Thank you very much.

MR. FORESTER: May I have your name?

MR. PERSON: Carl Person.

MR. KAPLAN: Excuse me. This should help you find it (handing).

THE COURT: Take these to the back of the room and make notes and give them back to the lawyers.

(In open court)

T2

BY MR. PERSON:

Q Mr. Murray, does your efficiency in this area of sales responsibility undergo any periodic review by General Motors?

A Yes, sir.

Q Is this periodic review in part to determine whether or not your franchise from GM will be renewed?

A No.

Q What is the purpose of the review?

A Well, I think the purpose of the review is to increase our allotments if we have earned them through our sales.

Q Isn't there a program of evaluation of dealer performance under this franchise agreement with General Motors?

A I believe there is.

Q Doesn't penetration in your area have any bearing on that review?

A Yes, I think it does.

Q Therefore, sales that would be made to a company which would register these cars outside of your area would affect the review of your performance, isn't that correct?

A Yes, sir.

Q Exhibit 17 is apparently in evidence right now. It is a letter dated April 11, 1966, from Mr. Murray of Colonial Cadillac to Hugh DuPuis, zone district manager --

A No.

Q Zone distribution manager, Cadillac Motor Car Division, Philadelphia Zone Office, Moorestown, New Jersey.

(Exhibit read.)

Q You sent this letter to the zone?

A Yes, sir.

Q Did you have any further communications with the zone concerning this request for a fleet allotment?

A To my knowledge, no.

Q You don't recall any reply by the zone?

A No, sir.

Q Or discussion with the zone concerning this?

A No, sir.

Q Or any orders that you sent to the zone for Nabcor?

A No, sir.

Q Whether retail or fleet?

A No.

MR. PERSON: No further questions.

MR. KAPLAN: It was pointed out that Plaintiffs' Exhibit 17 was not in evidence, but I have no objection to it.

THE COURT: We will still receive Exhibit 17.

xx (Plaintiffs' Exhibit 17 received in evidence.)

CROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Murray, is it not a fact that on almost all of your sales to leasing companies, rental companies, or any kind of fleets, you had title first transferred to Mercer and then the cars sold from Mercer to those fleets?

A 9o to 95 per cent of the cases.

Q It is not something you did especially for Nabcor?

A No, sir.

Q You didn't do it because you were trying to hide the fact that you were selling to Nabcor, is that right?

A No, sir.

Q As a matter of fact, sir, your understanding would have been or was that had General Motors known you were putting these titles through Mercer Leasing it would have been upset about it, isn't that so?

THE COURT: Read that question.

(Question read.)

MR. KAPLAN: I will rephrase it.

Q You had no other purpose in putting title to these cars to Mercer, at least as far as General Motors was concerned?

A No, sir, we did not.

Q Sir?

A No, we did not.

Q General Motors never told you to do that?

A No, sir.

Q You said on direct examination that when you first began to deal with Nabcor you were under the impression they were a leasing company, true?

A Yes, sir.

Q Did there ever come a time when you learned Nabcor was reselling and was not a leasing company?

A Yes, sir.

Q That was in 1973, wasn't it?

A Yes, sir.

Q Did you ever refuse to sell to Nabcor from the period 1966 to 1973 because they were reselling cars?

A No, sir, not to my knowledge.

Q I believe you said on direct examination that you didn't want the business of resellers, is that so?

A Yes, sir.

Q Why not?

A Well, if this situation were permitted to prevail, it would put us out of business. We couldn't compete against such competition.

Q Were resellers such as Nabcor offering to pay the same prices as you got from other customers?

A No, sir. The Nabcor transaction took about four or five or six hundred dollars over invoice.

Q During the period about the same time as you made that first sale to Nabcor how much did you usually get on an automobile sale, a Cadillac sale over invoice?

A To the customer?

Q Yes, sir.

A I think ours was around $12 or $13 hundred.

THE COURT: A leasing company would pay what, five or six hundred over?

THE WITNESS: Yes, sir. The retail would be about 12 or 13 during that period.

Again, my records are impounded and I don't know the exact figure, but it would be somewhere in that area.

Q Your statement that you couldn't compete with resellers would be true only if one assumes that the reseller was getting the car at a discount?

A Yes.

Q Nabcor wanted the cars at a discount?

A Yes, sir.

Q Did anyone at General Motors ever tell you not to sell to resellers?

A No, sir.

Q Did anyone at General Motors ever tell you not to sell to Nabcor?

A No, sir.

Q Did you ever have any conversation whatsoever with anybody from General Motors relating to Nabcor before you were subpoenaed to testify in 1973 in this case?

A No, sir.

MR. KAPLAN: I have no further questions.

REDIRECT EXAMINATION

BY MR. PERSON:

Q Do you recall whether in the Summer of 1967 that you spoke with Mr. Maiorana and arranged to meet with him in New York?

A That was up at Tuckahoe? That is the only time I came up.

Q Was it there or in the General Motors Building, Nabcor offices?

A My recollection of the meeting with Nabcor was only at the Tuckahoe office up in New York.

Q Did you and Mr. Maiorana discuss the Nabcor Company?

A I would assume we did, although I don't recall it. I don't recall the discussion.

Q Were you interested in what kind of company it was?

A Yes, I assume I was.

Q You dealt with it previously. Do you recall what you were told concerning the company?

A No, sir, I do not.

Q Do you have any recollection then from any prior transaction of what Nabcor was doing?

A No, sir, I do not.

Q Did you have any reason, can you recall why you went over to New York to speak with Mr. Maiorana?

A I am sorry, but I didn't hear you.

Q Do you recall why you went to New York to speak with Mr. Maiorana?

A I am sure it was at his request, although I can't swear to it.

Q Do you recall whether you discussed the possibility that Nabcor would purchase some more automobiles or at least in addition to what they had done previously?

A I am sure that would be part of the conversation.

Q Any discussion about the necessity of obtaining a fleet certificate before you could obtain any cars for Nabcor?

A Not that I recall, sir. I don't recall that. The fleet certificate would have to be gotten by the purchaser, not by us.

Q Yet do you recall whether you had kept a request, a pad containing requests for fleet user certificate in your place of business at Colonial?

A No, sir, we would not have such.

Q Did you produce requests during the preliminary injunction hearing in 1973, a pad?

A A pad with a fleet user's number on it?

Q A pad that was to be filled out for anyone who wished to apply for a fleet certificate.

A Yes, sir, I think this was produced, yes, sir.

Q Subsequently did you know by 1967 whether Nabcor was in the business of reselling cars or not?

A I did not.

Q Did you inquire?

A I did not.

Q You were never told?

A No, sir.

Q You had visited their premises both in Jenkintown and in Tuckahoe, New York?

A Yes, sir.

Q You hadn't found out by that time?

A No, sir.

Q In 1972 you accepted one or more orders from Nabcor for additional automobiles?

A One, yes, sir.

2 Q You ordered that car for Nabcor?

A Yes, sir.

Q You didn't know then that Nabcor was a reseller?

A I am not sure, but I think I did at that time, although I am not positive.

Q Do you recall in your meeting in New York whether you had said to Mr. Maiorana that you wanted to sell cars to Nabcor but could only do so if Nabcor obtained a fleet certificate?

MR. KAPLAN: Objection.

THE COURT: I would like to hear the question.

(Question read.)

THE COURT: Objection overruled.

A I honestly don't recall the conversation with Mr. Maiorana. I probably -- that is part of the conversation, but I don't recall it specifically.

Q Do you recall --

MR. KAPLAN: I move to strike.

THE COURT: I will tell you what. Why do you say "probably"? Are you saying you probably would have told him?

THE WITNESS: Normally when a company is trying to buy cars from us, we were expected to have a fleet certificate number, that they had been okayed for fleet purchases.

Q In other words, a purchaser had to have a fleet certificate to buy cars from General Motors on a fleet basis, is that correct?

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MR. KAPLAN: I object to that.

THE COURT: He is questioning, overruled.

MR. KAPLAN: We are getting into this fleet basis thing again and I don't know if it means anything.

THE COURT: That is the testimony of the witness.

MR. KAUFMAN: He didn't say fleet basis.

THE COURT: Let's go back and read the question where he said "probably," and let's just read up from that point to the present.

(Record read.)

THE COURT: Rephrase the question.

Q In order that a purchaser be able to buy cars, that is a fleet purchaser, a purchaser must have a fleet certificate, is that what you said?

A No, sir.

MR. KAPLAN: I object to it.

THE COURT: It isn't a question of what he said.

Q Is it correct?

MR. KAPLAN: I object. The basis of my objection is quite simply that I have no idea what Mr. Person means, and therefore would have no idea what the witness's answer means.

THE COURT: Let's see if the witness has an idea. He is the witness.

THE WITNESS: Ask that again.

Q What do you mean by a fleet purchaser?

A I don't know, because we have no control --

THE COURT: I don't know that he used the term.

Q You are saying --

A I don't know what a fleet purchaser is.

Q In other words, when you make a fleet sale, when you accept a fleet order, do you confine this acceptance only to customers that are approved by General Motors?

A No.

Q Do you sell to persons not approved by General Motors?

A Sure.

Q What types?

A Whoever -- being an independent businessman General Motors doesn't tell me who to sell to. I can sell to whoever I choose.

Q You know that?

A Yes, sir, definitely.

Q Can you obtain a fleet allotment for anyone you choose?

MR.KAPLAN: That is a matter of stipulation. We have been all through that.

A No, I can't.

THE COURT: Don't interfere.

THE WITNESS: I can sell him any fleet cars I want, but that doesn't mean I have to have a fleet agreement for it. I can sell them.

Q What is a fleet agreement?

A Well, as I understand it, the fleet agreement or fleet allotment, rather than fleet agreement -- the fleet allotment has got to do with the use of cars for fleet rental, daily rental or for long-term rental, and the customers keep them for a period of a year, two years or three years, whatever the term of the lease may be for the fleet.

Now, the fleet purchases are usually picked up through the Polk registrations up until some time ago, hooked up to the Polk registrations,meaning that the company was leasing 100 cars, they would be legitimate people to buy leasing allotments, and get an allotment.

Q Are you referring, first of all, to the National Account List?

A No, I never saw that.

Q Exhibit 626?

A Never saw one, that fleet. I don't know anything about fleets.

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Q Does Mercer have a fleet certificate?

A No, sir.

Q Did it ever apply for one?

A No, sir.

Q It says Mercer Sales & Leasing. That's on page 179 of this National account list. Isn't that what you were referring to?

A No. I never saw one until just now.

Q Your-ability to obtain a fleet allotment is limited only to customers that are approved by General Motors; isn't that correct?

A A leasing allotment? Yes, sir.

Q Any fleet allotment whatever --

A Leasing allotment and not fleet.

Q You only know about a leasing allotment?

A Yes.

Q In that case that allotment is only for those customers that are approved by General Motors?

A No. We could sell to someone that was not approved by General Motors.

Q Could you get a fleet allotment?

A I don't know. I never tried. I don't know.

Q It's been stipulated, I think, that you would not be able to.

A That did not preclude me from selling them.

Q If you can't get a fleet allotment you are limited then to your retail allotment?

A No.

Q What other allotment is there?

A Well, we have what they call a planning potential in our zone of influence and that planning potential is predicated on the number of high price groups sold in our area of influence, and nationally, at this time that you are speaking of, 35 per cent, I believe, of the high priced group was what we call our average take of the car. In other words, Cadillac would sell 35 per cent of the HPG, high price group.

Q That would result in a certain number of cars that you would be abel to sell at retail?

A Yes.

Q You said you were concerned about sales to resellers because these resellers would be competing with you; is that correct?

A Yes, sir.

Q Would that be true if the resellers were selling the cars elsewhere?

pgr3 Murray-redirect

A I don't think it would matter where.

Q Why? Are you selling outside of your territory?

A Yes, sir. We do.

Q Where?

A We would sell in Philadelphia.

Q Would you be competing with Nabcor sales in Philadelphia?

A I suppose if they were in Cadillac sales, we would.

Q In other words, you are testifying that you did not want to sell to Nabcor because of competition that you feel may have existed outside of your area of sales responsibility?

THE COURT: That's very confusing.

A I don't understand the question.

Q Did you know whether Nabcor was selling cars in your area of sales responsibility?

A I didn't know where they sold cars.

THE COURT: Can you be specific about a time?

Q In 1966 --

THE COURT: He testified that he didn't know they were reselling cars. Don't assume something that's not in the record and ask a question based on the misassumption.

Q The fact that Nabcor was a reseller of cars meant to you that you should not be dealing with them at all; is that correct?

MR. KAPLAN: I object. He didn't know it.

A I did not know -- I understood later what that meant.

Q When did you find out?

A It was after '73, I think, when I found out. I'm not sure of the time. I did not know.

Q You had transactions with Nabcor off and on from 1966 to 1973 --

MR. KAPLAN: The records show he sold him two cars, one in '66 and one in '73.

THE COURT: The record is being developed. You can ask a question. He has said many times that he didn't know.

You can ask more about that if you wish to.

Q Do you recall whether in 1967 you had a conversation in which you told Mr. Maiorana that you were unable to get a fleet certificate for Nabcor from the factory and that as a result Colonial would not be able to sell cars to Nabcor?

A I do not recall that. I honestly do not recall that conversation at all with Mr. Maiorana.

MR. PERSON: No further questions.

RECROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Murray, you received Plaintiffs' Exhibit 18 in 1966, true?

A Yes, sir.

(Mr. Kaplan read to the jury from Plaintiffs' Exhibit 18 in evidence)

Q Is Plaintiffs' Exhibit 18 the reason you thought Nabcor was in the leasing business?

A That's the reason.

Q Nabcor never disabused you of that notion until 1973, true?

A No. That's true.

Q It had been true throughout the period we have been talking, to get this rental and leading allotment for people who didn't have fleet certificates?

A Yes.

Q And your company has obtained renting and leasing allotment for firms that didn't have fleet certificates?

A Absolutely.

Q You, sr, have sold automobiles out of your regular allotment to companies that were in the rental and leasing business?

A Many times.

Q As a matter of fact, even when you get a rental and leasing allotment for a company you typically sell two-thirds or more of the total number of cars, you sell such a customer out of your regular allotment and not the rental and leasing allotment?

A True.

MR. KAPLAN: No further questions.

FURTHER REDIRECT EXAMINATION

BY MR. PERSON:

Q Sir --

THE COURT: Mr. Person, this has got to end. You had a long redirect --

MR. PERSON: It's almost finished.

Q The reference to the fleet certificate number in this letter dated March 15, 1966, was that important to you?

A May I see that letter a minute? The thing that was important to me in this letter was that

A Yes.

Q Do you recall what the requirements were for a fleet certificate at that time?

A I don't know. I have nothing to do with fleet certificates. I have nothing to do with it.

MR. PERSON: Can't we stipulate it was 20 cars --

MR. KAPLAN: We have stipulated it more times than I care to remember.

Q What were the requirements for a person to be able to obtain a fleet allotment?

A My understanding of a fleet allotment, it was given out by someone in General Motors other than the dealer. I think the fleet dealer for this area was in New York. I had never met or talked to him. I think it was incumbent upon the person requesting a fleet agreement to prove that he was going to buy the cars and use them or something. I don't know what it was. We never had anything to do with it. We could not say yes or no to a fleet certificate.

Q You don't know whether the same requirement existed for a fleet certificate and for a fleet allotment?

A No, sir.

A They do not look familiar to me.

MR. PERSON: These are the Nabcor new car order forms.

(Pause)

THE COURT: November 1966.

Your answer is that you are not familiar with those?

THE WITNESS: That's right.

Q Did Colonial ever accept any orders by telephone from people with whom they were dealing?

A Yes.

Q What would you do when you received an order by telephone? What paper would you prepare?

A I have a price list that we use for customers and I would have taken those and checked off the items of equipment and the type of car that they would like to have.

MR. PERSON: I offer Plaintiffs' Exhibit 617.

MR. KAPLAN: No objection.

THE COURT: It will be received.

(Plaintiffs' Exhibit 617 was received in evidence)

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Q Mr. Hartsough, Exhibit 617 in evidence, is that the form that you were talking about?

A That is one, yes.

Q That is a work sheet?

A That is a work sheet that has the list and the cost on it.

THE COURT: For an individual car it would have all the possible accessories?

THE WITNESS: That is right, for our leasing customers to work with, issued by Mr. Murray.

Q This form was for leasing customers?

A That is right.

Q But not retail?

A Not for retail, no. We wouldn't disclose that to the retail customer.

MR. PERSON: I would like to show these exhibits, 617, 654 and 655, to the jury, with your permission.

THE COURT: All right.

(Exhibits handed to jury.)

Q Did you receive any orders that you did not fill for whatever reason?

THE COURT: From anybody?

MR. PERSON: Yes.

A Yes.

MR. KAPLAN: Objection.

THE COURT: Sustained.

MR. PERSON: I would like to find out what procedures they followed with respect to the orders they received but didn't fill.

THE COURT: You can ask that.

Q What procedures did you follow with respect to orders that you receive which you did not fulfull for whatever reason?

A First of all, we get allotments every month from Cadillac and our first concern is our retail business.

Of course, in each allotment, our allotment for leasing deals, leasing companies that have been approved, get a certain number of cars. That is, cars to go to companies that have leasing allotments.

There is our regular allotment that we take care of our retail business first.

Q Why?

A That is where we make our money and where we deal mostly with, and what is left over we will then try, use for stock, because we want to have some available for people when they come in, and if we have anything left over, then we give them to the leasing companies that we have dealt with over the years.

And if there is any left, but if we have retail business, thereare very few.

Q So that orders that would be waiting from the leasing companies that had no extra allotments?

A That is right.

Q Or anyone else, in some cases would not be filled because of no cars?

A Well, they would have to wait longer than the others. We would put it back to next month and perhaps reorder them later and so forth and so on.

Q How many months could a person wait?

A It could be two or three months and this would apply lots of times. It has happened at times.

Q Does there come a time at which you say, "I am sorry, I can't deliver the cars"?

A I would say if the situation became critical we could say that to people. We say we can't do it, we can't handle the business, we just don't have the cars.

Q Do you recall having said that to Nabcor?

A I didn't say it, no, I am not in that position.

Q Do you know who did?

A No, I don't know.

MR. KAPLAN: I move to strike that.

THE COURT: They can't do that. There is no record that anybody did so far.

Q Do you know if anybody did?

A I don't know, that is not my responsibility.

Q Whose responsibility was it?

MR. KAPLAN: I object. It assumes that it is somebody's.

A Not me.

Q In this hypothetical situation whose responsibility would it be to determine whether or not you would tell somebody, "I am sorry, we can't deliver you the cars"?

A It would possibly be Mr.Murray or Mr. Clarks, the sales manager, somebody in a position to know what we should do with our cars.

MR. KAPLAN: I move to strike that.

THE COURT: Overruled.

Q What would happen to the orders not filled, the forms similar to the one that we have in evidence, 617?

A It would just -- say thatthe time came when it was too late for us to handle the car and couldn't deliver to our customer, that the deal would just never be filled, then throw the form away. Usually I had a file for cancellations or things that didn't materialize.

This happens a great many times, people are going to Florida and the car can't be built for them in time and the order becomes null because we weren't able to get them for them..

But I keep a file usually on that for a few years and throw it away, of course.

Q You have thrown some of these forms away?

A I have, yes.

Q Have you ever actually looked through that cancellation file to see if there were any cancelled orders for Nabcor in that file?

A No. As I said, we don't keep records that long. I haven't got anything that time.

THE COURT: Can I see Exhibit 617, those three exhibits? As soon as the jury finishes looking at them.

MR. PERSON: I have no further questions.

$85: CROSS EXAMINATION

BY MR. KAPLAN:

Q Mrs. Hartsough, did anybody at General Motors before you were subpoenaed in 1973 ever say a word to you on the subject of Nabcor?

A No.

Q Did anybody from General Motors before you were subpoenaed in 1973 ever say anything about Nabcor to anyone else at Colonial Cadillac?

A No.

MR. KAPLAN: No further questions.

THE COURT: Let's wait for the jury to look at the documents and then I will look at them again.

As I understand it, Exhibit 617, this long list does not refer to --

MR. PERSON: It is a form.

THE COURT: It relates to a transaction in the Spring of 1966, isn't it?

MR. PERSON: But I only asked in connection with what they typically did with an order to see what record would be created.

THE COURT: This relates to one car in the Spring of 1966, right, Mrs. Hartsough, this long list, the work sheet?

THE WITNESS: I better look at it.

EXAMINATION

BY THE COURT:

Q This work sheet starts out with the price of the basic car, right?

A Yes.

Q Then there are a whole lot of options and prices for those options, right?

A This car is a work sheet. These are the list prices over here and these are the cost figures for white sidewall tires --

Q By cost you mean the cost to --

A To Colonial Cadillac.

Q Did you write all that out?

A This is Mr. Murray's writing and they would add $550 to the base, to all the other equipment over here. These are the cost figures.

Q But this relates to the Spring of 1966, the Calais Cadillac.

A To any car.

Q But this particular sheet was about the --

A To any. They will use this work sheet.

Q You have to face the jury, I guess, but I don't think you have to go back.

A This is the list price of all cars they had at that time with the equipment available.

Over here is the cost figure, what Colonial Cadillac would pay from the factory.

In here Mr. Murray added 550 to the base of all the other equipment, and 550 to the base, that would be the base prices up here, and add 550 over what we paid for it.

Then they would take any items of equipment they wanted on the car and add that to the figure and they could determine how much a car would cost in their own office.

2 Q In other words, the typewritten figure is the list retail price if some retail customer were coming in, right?

A Right.

Q But from this point here Mr. Murray in ink wrote out all the figures for the cars and for the accessories, the cost to Colonial, right?

A Right.

Q Then Mr. Maiorana was given this, right?

A Right.

Q The idea was Mr. Maiorana could take the car he wanted and that price might be for a convertible De Ville and that would be $4325.40?

A Right.

Q He could add, if he wanted to add a particular type of seat or radio or a certain kind of doors?

A Right.

Q He could add that all from the cost column and you would have Colonial's cost for this car and then he would add 550 to that, right?

A Right, this is the cost figure --

Q Wait a minute. He would add $550 to the base price for the car and then as far as other equipment, he could get that at cost?

A Exactly.

Q So he could take the $4325 for the convertible De Ville, that is Colonial's cost, and add $550 to that?

A Right.

Q As far as tha other items, he would just pay Colonial's cost without markup?

A Right. And that would be for the freight also.

THE COURT: I get it. All right. Thank you very much.

THE WITNESS: Not a particular car, any car.

(Witness excused.)

THE COURT: We will take our break now.

(Recess.)

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(Jury in box)

THE COURT: Call your next witness.

MR. PERSON: Mr. Martabano.

JOHN MARTABANO, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PERSON:

Q State your residence address.

A I reside at Edgewood Road in Katonah, New York.

Q Are you affiliated with a dealership?

A I am the owner.

Q Of Marty Motors Corporation ?

A That's right.

Q How long have you owned that?

A I have owned it since 1954.

Q And you are an officer?

A I am the president.

Q Director?

A President and owner-operator.

Q Are you the general manager?

A No. I would not term it as a general

manger, but I perform duties all day long.

I overlook the entire agency.

Q Do you have any affiliation with Bano Buick?

A He's my brother. I have none.

Q What is his name?

A His name is Alfred Martabano.

Q You have no ownership interest in Bano Buick whatever?

A No, sir.

Q Have you ever had one?

A When it was first bought, yes.

Q When was that?

A I would say about 1959, '60.

Q How long did you have an interest in that?

A Until I bought him out of my dealership.

Q Where is he located?

A He is located on Main Street, Mt. Kisco, New York. My address is 271 North Bedford Road, Mt. Kisco, New York.

Q Have both dealerships been located in the same place from 1966 to the present?

A Yes.

THE COURT: When did you completely split up, bought each other out or whatever happened?

THE WITNESS: Probably in 1970.

THE COURT: Before 1970, did your brother own part of Marty Motors?

THE WITNESS: That's right.

THE COURT: Did you own part of Bano Buick?

THE WITNESS: Yes, sir, I did.

Q Was your brother an officer or director of Matry Motors up to 1970?

A I would say he was a stockholder. He was not an officer.

THE COURT: Was he active in the business of Marty Motors or did he just --

THE WITNESS: No, he was not.

THE COURT: In other words, you ran Marty?

THE WITNESS: Yes.

Q You were not an officer or director or active in Bano Buick up to 1970?

A No, sir, I was not.

THE COURT: He ran Bano?

THE WITNESS: That's right.

Q Marty Motors is a Cadillac-Oldsmobile dealer, is that correct?

A That's right.

Q How long have you been franchised to sell both Cadillacs and Oldsmobiles? since July of 1961

A Since 1954.

Q Do you recall when you first came across the name of Nabcor?

A No, sir, I don't.

Q Did you ever come across the name of Nabcor?

A I heard of them, yes.

Q How far back can you recall having heard of Nabcor?

A Approximately 1963.

Q In what connection do you think you heard it back in 1963?

A I never was involved in the day to day dealings with Nabcor personally.

Q Did there come a time in which Nabcor and Marty Motors started doing business?

A Yes, we did do some business with them.

Q Do you recall when that was, approximately?

A About 1963? I don't know.

Q Nabcor, from what we have seen so far -- and I don't think there is any other evidence coming in on that --started in business in 1966.

A I'm sorry. That proves my point that I was not aware of it.

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pgr5 Martabano-direct

Q Did you have any communications yourself personally with anyone at Nabcor?

A None.

Q You recall no communiations with Frank Martabano?

A None at all, sir.

Q Or do you know of an Ernest Turco at Nabcor of East New York?

A No.

Q Or have you heard of Turco Auto Sales and Leasing?

A No, sir, I do not.

Q How far is Mt. Kisco located from the center of Manhattan?

A 33 miles, the way the crow flies.

Q You've computed that recently?

A Yes, sir, I drew a line.

Q Did you have any discussions with anyone in your dealership concerning Nabcor?

A Yes, I have.

Q Did you ever have any discussions with your brother concerning Nabcor?

A Not that I can remember, no.

Q What was the name of the general manager of

A Making a fair profit on the car.

Q You would be willing to sell the car --

MR. KLEINBARD: I think there is a failure of communication here.

THE COURT: He is asking you if you had any policy or procedures about whether you would put the title in the customer or somebody else, I guess is the question.

A Is that what you are asking?

Q If a person bought a car from you, would it be normal to put the title of the car in the name of the customer?

A Yes, that is the normal way.

Q Did you ever talk with anyone at General Motors concerning Nabcor prior to the commencement of this suit?

A No, sir.

Q Have you heard of a company by the name of Ship Tanks Service Marine Corporation?

A Only recently.

Q Was that in connection with this litigation?

A I assume so.

Q Do you know the names of customers of Marty Motors?

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MR. PERSON: I will pull out this form as well.

THE COURT: This is not significant, is it?

MR. SILVERMAN: I think Mr. Person is going to attempt to make a leap between the documents on the basis of the notations written on 658.

THE COURT: The whole point is they can register it in the name of the customer. Why do we have to go through all of this rigmarole?

MR. PERSON: It is easy enough to stipulate that the document --

THE COURT: Marty sold -- apparently registered it in the name of the customer.

MR. KLEINBARD: I don't have the same situation that we have with Colonial, your Honor.

THE COURT: I am not saying you do. The simple fact is from the documents in evidence that they sold it and put it in the name of Nabcor's customer. Isn't this in the Police Motor Vehicle thing?

MR. PERSON: This one probably would not have appeared. When you skip title it would appear in the police book.

MR. KLEINBARD: There is nothing to show this wasn't sold directly to Tank Ship Service by our people.

MR. SILVERMAN: The invoices from Marty to Ship Tank. Mr. Person would like to connect this particular purchaser by this handwriting.

THE COURT: What is the problem about doing it? So what?

MR. PERSON: I have it through a lot of documents.

THE COURT: Why do you have to have 17 documents so that you can prove it? You are offering all of this stuff.

MR. PERSON: They won't admit it.

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MR. SILVERMAN: The witness wasn't involved in the transaction.

THE COURT: You don't need all this stuff. I will sustain the objection.

I don't think it makes any difference one way or the other, but you have enough documents here to prove a very simple point that as far as Marty was concerned, they invoiced to Ship Tank and registered the car in Ship Tank. The order came through Nabcor for Ship Tank.

MR. SILVERMAN: That isn't established by this document?

THE COURT: Yes, it is. Exhibit 656 has

Nabcor's customer, Ship Tank Service. Let us go on.

I will sustain the objection because it is superfluous.

(In open court.)

MR. PERSON: I would like to read from the log.

THE COURT: What is it you are trying to show? Why do you have to read through that?

As I understood it, the documents thus far in evidence reflect that Nabcor got an order from a customer. I don't know who the broker was, but the customer was this Ship Tank Service Corporation. The order was given to Marty Motors and Marty Motors invoiced Ship Tank, not Nabcor, and the car was registered in the name of Ship Tank and not Nabcor. That is shown in the documents.

Let's go on to something else.

BY MR. PERSON:

Q This Exhibit 656 in evidence, have you seen an order form, a white order form, like that before?

A I never did.

Q You can see that this is a purchase order form from Nabcor to Marty Motors.

A I'm seeing it for the first time.

Q The name ofNabcor's customer, it says Ship Tank Service Corp.

Exhibit 657 in evidence is what? Take a

Oldsmobile in Delaware?

A No, sir.

Q Do you recall having a meeting with Frank Ripperger and Frank Maiorana of Nabcor in your office back in 1967, early '67?

A I don't recall.

Q Assuming there was such a meeting -- I'm not stating it as a fact, but hopeing to overcome an objection that is probably going to be raised --

THE COURT: Ask if something was said then.

Q Do you recall you said to Mr. Maiorana that Marty Motors would be willing to sell Cadillacs and Oldsmobiles to Nabcor and through Bano Buick you would supply Buicks to Nabcor?

A I don't recall that.

Q Or whether you said you would sell Opels to Nabcor?

A I never said that.

Q Did the Bano Buick dealer also deal in Opels?

A Yes, he does.

Q Do you recall whether Frank Maiorana gave you at that time a couple of orders for Cadillacs?

A I don't remember it.

Q Do you recall in approximately February of

1968 whether a zone manager for Cadillac came into Marty Motors and told you and Mr. Ripperger that no more cars should be sold to Nabcor?

A No, sir. I don't recall.

Q Do you recall whether the zone manager from Cadillac had said whether he had traced a couple of Cadillacs that Nabcor had bought for Nabcor, or whether he had said that General Motors got a couple of complaints from FM dealers about Nabcor?

A No, sir, I don't.

THE COURT: When was this supposed to have happened?

MR. PERSON: February of '68.

Q Do you recall whether you told Mr. Maiorana that the Oldsmobile zone had not bothered Marty Motors and that Marty Motors would continue to selll Oldsmobiles directly to Nabcor?

A I don't remember that. No, sir.

Q Do you recall having talked with a Jack Snyder at Nabcor?

A No, sir. I never talked to Jack Snyder.

Q Do you recall whether you had said to Jack Snyder that you were not allowed to sell cars to Nabcor?

A No, I did not.

Q And whether you had specifically mentioned the Cadillac zone in connection with that conversation?

A No, sir.

Q Do you know an Ernest Turco?

A No, sir, I don't.

Q You don't recall any conversation where you and Mr. Ripperger and Mr. Ernest Turco were present at which Mr. Ripperger had said that the reason that Cadillacs had to be titled to the customer of Nabcor was that the factory had told you not to sell Nabcor Cadillacs andthat this procedure would be how Marty Motors would get around GM's order?

A No, sir. I don't recall.

MR. KLEINBARD: May we approach the bench a minute?

THE COURT: I think he's finished.

Is that the end of the questioning?

MR. PERSON: Yes.

CROSS-EXAMINATION

BY MR. KLEINBARD:

Q Did GM ever suggest, ever go so far as to suggest, that Marty Motors not deal with Nabcor?

A No, sir.

Q That applies to both Cadillacs and Oldsmobiles?

A That's right.

Q Did you ever tell anybody in Marty Motors that they should not sell to Nabcor?

A No, sir.

MR. KLEINBARD: That's all.

THE COURT: You may step down.

(Witness excused)

485:THE COURT: Are there any other witnesses we can have quickly from out of town?

MR. KLEINBARD: Mr. Ripperger has been here twice, your Honor.

FRANK J. RIPPERGER, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PERSON:

Q You are employed by Marty Motors?

A Yes.

Q How long?

A 1965.

Q What was your position then?

A Salesman.

Q What is your position now?

A Cadillac sales manager.

Q Back in 1966 what were you?

A Salesman.

Q When did you become the sales manager?

A Around '70, '71.

Q Did you ever have any responsibility for fleets?

A As to what?

Q As to accepting orders for fleet transactions?

A Not really.

Q Did you ever have a responsibility for accepting any kind of orders?

A Yes.

Q Do you know Ernest Turco?

A Yes, sir.

Q When did you meet him?

A Probably 1968.

Q Was he connected with Nabcor of East New York?

A To my knowledge, yes.

Q Have you ever talked with him?

A Yonkers, not East New York, I thought.

Q The name of the company was either Turco Auto Sales and Leasing or Nabcor East New York?

A Yonkers is all I know.

Q That's the location.

Have you ever communicated with Frank Maiorana of Nabcor?

A Once, to my knowledge.

Q When was that?

A Early part of '67.

Q Have you communicated with Jack Snyder of Nabcor?

A Telephone conversation only.

Q Any other people from Nabcor?

A Other than Ernest Turco, if he's from Nabcor.

Q It could be construed either way since --

THE COURT: You don't have to explain. He has talked to Turco.

You know Turco?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q Any other people from Nabcor?

A Not that I know of.

Q Did Marty Motors start doing business with Nabcor?

A Yes, sir.

Q Do you recall when this occurred?

A I would say in the middle of '67.

Q Do you recall who participated in seeting up this relationship?

A Originally it was Mr. Maiorana who started.

Q Mr. Maiorana and who else?

A That's all.

Q Was it between you and Mr. Maiorana?

A That's right.

Q How did this occur? Do you recall?

A To my knowledge, he called me one day and asked me if I was interested in selling him some cars. That's all. I told him we were. He came up, we met and had lunch and that's it.

Q Do you recall what was said?

A He wanted to buy cars. He was a leasing company. He projected something further into the future. He didn't say.

Q Did you ask him whether he was a leasing company?

A He told me he was.

Q Did you ask him how many cars he had on lease?

A No.

Q Did it make any difference whether he was a leasing company?

A No, sir.

Q You were willing to sell cars to him whether he was reselling or leasing, is that correct?

A Sell him cars. We sell him cars. He was leasing. The dollars was all I was concerned with, so many dollars, sell many cars.

Q It didn't matter to you whether he was leading or not, is that correct?

A No, sir.

Q Do you recall whether any orders were submitted at that time by Nabcor?

A At the initial meeting?

Q Yes.

A No.

Q Do you recall when the first orders came in in relation to that first meeting?

A No. I think they were mailed in. I'm guessing. I don't know.

Q Was the first order a Cadillac, if you can recall?

A Truthfully I can't say.

Q The log for Nabcor shows that on May 24, 1967 an order was placed with Marty Motors for a Cadillac.

MR. KLEINBARD: Can you give us the serial number? I may be able to stipulate.

THE COURT: We have a whole list on Exhibit F. Can't we use something we already have? You have a sale July 7, 1967 and there is a number, pleaes book lot number 259, Marty Motors Corporation, 1967 Cadillac, and then there is another one on July 20. Can't we work with that?

MR. KLEINBARD: Yes.

THE COURT: That's Exhibit F.

THE COURT: All right, Mr. Person.

MR. PERSON: This first automobile on July 7, 1967, I believe, we can stipulate, was entitled in the name of Nabcor.

MR. KLEINBARD: The invoice was from Marty Motors to Nabcor, I so state.

THE COURT: Fine. Next question.

Q Do you recall whether there came a time in which Marty Motors was no longer willing to sell cars to Nabcor directly with title going in the name of Nabcor, Cadillacs?

A 1970.

Q Can you tell me what happened that gave rise to this method of doing business?

A Last time we were paid we got a bad check. We had a hard time collecting.

THE COURT: It has b een stipulated that the first car was sold and registered in the name of Nabcor. The question is: Did there come a time when you were still doing business with Nabcor but as far as cadillacs were concerned the title was put in somebody else's name?

Isn't that the question?

MR. PERSON: Yes.

A Is that what he's saying?

THE COURT: He's asking you if there came a time when that change occurred?

THE WITNESS: Other than Nabcor?

THE COURT: Right.

Q A Nabcor transaction with Marty Motors where the title from Marty Motors went to Nabcor's customers.

A Yes.

Q Tell me why this occurred.

A If memory serves me correctly, I think they requested it, that the title be put into their name for the simple reason of warranty -- I'm not sure or positive -- warranty purposes only.

Q Isn't it true that at this same time you were selling Oldsmobiles directly to Nabcor and not putting the cars in the name of Nabcor customers?

A That's right.

Q Is there any reason for this difference in the two types of orders?

A Not unless they requested it.

Q Who requested this?

A Again, I don't think it could have been Mr. Maiorana. Either Jack Snyder or Ernest Turco. I don't know. I don't recall who it was.

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Q Were you ever called to testify about that anywhere?

A No.

Q Are you familiar with the warranty for Cadillac back in 1968?

A I am not too sure. I don't know whether I was that familiar. I should be, yes.

Q Do you recall any conversation other than what you said concerning this placing of title to Cadillac?

A No.

Q That is all that you can recall about that?

A Right.

Q Was Marty Motors subpoenaed to attend any grand jury --

A I can't hear.

MR. KLEINBARD: I object.

THE COURT: Why do we have to have this?

MR. PERSON: I want to see what documents, if any, were produced.

THE COURT: You can have discovery about documents without doing it in the courtroom. All of this could have been done a long time ago.

Are you in charge of documents at Marty Motors?

THE WITNESS: No, sir, I am not.

THE COURT: Do you know what files they keep?

THE WITNESS: I imagine the normal automotive kind of files.

THE COURT: Did you ever make any search for files or were you in charge of producing files for any investigation or lawsuit?

THE WITNESS: No, sir.

THE COURT: Do you have any knowledge of the details of the files that may have been produced for subpoenas or anything like that?

THE WITNESS: Not really, no.

BY MR. PERSON:

Q Do you recall during this meeting with Mr. Frank Maiorana or your initial communication with Frank Maiorana whether Mr. Maiorana and Mr. Martabano had a meeting at your dealership?

A I don't believe he did.

Q I am assuming if there was any such --

THE COURT: Don't assume, just ask questions if something was said.

Q Do you recall whether Mr. Martabano had any such meeting and said that he would sell Buicks through Bano Buick?

A No.

Q Or Opels?

A No.

Q Do you fecall whether Frank Maiorana gave any orders to Mr. Martabano at that meeting for Cadillacs?

A No.

Q Do you recall speaking with Mr. Snyder of Nabcor in February, 1968, approximately, to the effect that Marty Motors would not give Nabcor any more Cadillacs?

A No.

Q Do you recall speaking with Frank Maiorana concerning the subject matter of supplying Cadillacs for Nabcor?

A No.

Q Back about February, 1968?

A No.

Q Do you recall whether you said that Cadillac zone manager, you said to Mr. Maiorana the Cadillac zone manager was into Marty Motors place of business and told you and Mr. Marty Bano no more cars should be sold to Nabcor?

MR.KLEINBARD: May I approach the bench, your

Honor?

THE COURT: All right.

(At the side bar.)

MR. KLEINBARD: I recognize the liberality of refreshing the witness's recollection.

THE COURT: This is not refreshing his recollection, he is laying a basis for impeaching.

MR. KLEINBARD: We went through the same rigmarole with the last testimony and he is puttting in an awful lot of informattion in front of the jury which I think is improper and for which there is really no basis. It is the same as Mr. Person testifying at this point.

THE COURT: He has a right to try to impeach a witness with prior inconsistent statements and he has to lay the foundation for that by asking.

I will say that I am not sure you asked a basic question, you are so anxious to get into conversations. You are asking the question to which these things would be impeachment for prior inconsistencies. In other words, have you asked him, and I guess he says he does't recall the meeting at all --

MR. KLEINBARD: Also I don't think he asked the question as to any meeting with the zone manager.

THE COURT: That is right. I don't think you asked him. Ask him that. But basically he has a right to do this.

(In open court.)

Q Back in 1967 and 1968 who was the zone manager for Cadillacs?

A It could have been Mr. Tom Kern or Dick Gray. I am not sure.

Q Tom Kern or Dick Gray?

A I think so, I am not sure.

Q Do you recall --

A I am sorry, our district manager?

Q I said zone manager.

A No, it wasn't Kern. He was district manager, I am sorry.

THE COURT: Let's not pause on it.

Q Do you recall having spoken to either the zone manager of Cadillac or the district manager of Cadillac concerning Nabcor?

A No.

Q You never spoke with anyone from the zone concerning Nabcor?

A No.

Q Do you recall telling Frank Maiorana that

Marty Motors was willing to deal with Nabcor but the Cadillac zone manager was into the place and told you and Mr. Martabano no more cars should be sold to Nabcor?

A No.

Q Do you recall telling Mr. Maiorana in the presence of Mr. Martabano that GM had traced a couple of Cadillacs Nabcor bought from Marty Motors and GM got a couple of complaints from dealers, so the GM officials said no more cars to Nabcor?

A No.

Q Do you recall saying that there is nothing you could do about it, that you would sell the cars directly to Nabcor's customers even though Nabcor would pay for the cars?

A Not true.

Q Do you recall saying to Mr. Maiorana also that the zone manager for Oldsmobile had not bothered Marty Motors yet and that Marty Motors would continue selling Oldsmobiles directly to Nabcor?

A Rephrase that question, your Honor.

THE COURT: Have the reporter read it back.

(Question read.)

A No.

Q Do you recall any communications concerning Reverend Herman Hertzl?

A Never heard of him.

Q Any communications concerning Nabcor and Delaware Oldsmobile?

A Who?

Q Delaware Oldsmobile.

A No.

Q Do you recall June, 1970, approximately, whether Mr. Urso of Bano Buick had said that the factory told him not to sell any more Buicks to Nabcor?

A No.

Q Do you recall telling this to Mr. Frank Maiorana?

A No.

Q Do you recall in June, 1970, telling Frank Maiorana that the Oldsmobile zone had shut Nabcor off?

A No.

Q That there were no more cars of any kind for Nabcor?

A No.

Q Do you recall Frank Maiorana asking you about Buicks?

A No.

Q And that you had said that you could not sell Nabcor any more cars of any kind?

A Who wouldn't sell Nabcor?

Q That Marty Motors and Bano Buick would not sell.

A No.

Q Nabcor any more cars of any kind?

A No.

Q Do you recall if you had said to Mr. Maiorana that you were told this by the factory, not to sell to Nabcor?

A Not so.

Q You don't recall?

A No.

THE COURT: He said it is not so.

Is it a matter of your not recalling whether or not or are you saying it didn't occur?

THE WITNESS: Did not occur, sir.

Q Did you have a talk with Mr. Anthony Maiorana?

A Never heard of him, sir.

Q You don't recall whether you had spoken with Mr. Anthony Maiorana several times about the titling of the Cadillac directly into the Nabcor customer's name?

A No, sir.

rp

Q Or whether you had said that Marty Motors was not allowed by the factory to sell cars to Nabcor?

A Not so.

Q Whether you had said to Mr. Anthony Maiorana that you had called the factory to see if Nabcor could be in the fleet program and the factory told you not to deal with Nabcor?

A I don't know Mr. Anthony Maiorana, never heard of him.

Q Had you called the factory?

A No.

Q To ask the factory did Nabcor participate in any fleet program?

A Absolutely not.

Q Had you ever made any application for a fleet rebate for any sales to Nabcor?

A No.

Q Why?

A Never did.

Q Why?

A It was not within my province.

Q Is it because Nabcor wasn't entitled to any rebates?

A I don't know anything about it, sir.

rp Ripperger-direct

Q Were you aware Nabcor was reselling cars?

A Selling cars? They were a leasing company to my knowledge.

Q You didn't apply for any fleet rebates?

A No, sir.

Q Why?

A It was not within my province. Had nothing to do with me whatsoever.

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Q Did you ever suggest to anyone in Marty Motors inasmuch as in your opinion Nabcor was a leasing company that it should be entitled to a fleet rebate?

A Never applied and never suggested it.

Q Has Marty Motors applied for fleet rebates for other customers?

A No.

Q No fleet rebates?

A No.

Q Do you service any leasing companies?

A Service any leasing companies? Yes.

Q You can't recall having applied for any fleet rebates?

A No.

Q Do you recall telling Mr. Anthony Maiorana that with Oldsmobiles that you were okay with the factory, you can sell?

MR. KLEINBARD: I object.

THE COURT: Yes.

A I don't know him.

Q That you would sell Cadillacs to Nabcor if you could hide the sales from GM?

A No.

MR.KLEINBARD: Same objection, your Honor.

Q Have you talked with Jack Snyder?

A Yes.

Q Do you recall telling Jack Snyder that Marty Motors would sell Oldsmobiles to Nabcor, that the zone instructed you not to sell Cadillacs to Nabcor and therefore if Nabcor purchased Cadillacs you would have to put it in the customer's name?

A Not so. That is not so.

Q And that you weren't allowed to sell?

A No.

Q Do you recall telling Mr. Snyder that clearly the zone told Marty Motors that GM would not permit Marty Motors to sell to Nabcor?

A I said it before, it is not so.

THE COURT: We had enough of this.

Q You can't recall any conversation with Mr.

Turco to the same effect?

A No.

THE COURT: I think he is denying these conversations and that we don't have to have all these details, Mr. Person.

MR. PERSON: No further questions.

THE COURT: The foundation is laid. Any cross?

MR. PERSON: One thing further, your Honor.

MR. KLEINBARD: No objection.

MR. PERSON: Exhibit 659, 660 and 661 are three invoices from Marty Motors to Nabcor, Inc. for Oldsmobiles in each case.

xx (Plaintiffs' Exhibits 659, 660 and 661 received in evidence.)

THE COURT: Finish your questions.

MR. PERSON: I am done, your Honor.

THE COURT: Any cross?

MR. KLEINBARD: Yes, your Honor.

CROSS EXAMINATION

BY MR. KLEINBARD:

Q You have testified that you dealt with Nabcor as a leasing company, is that correct?

A Right, yes, sir.

Q You sold them a number of automobiles?

A Yes, sir.

Q Oldsmobiles, I should say?

A Yes, sir.

Q You continued selling them Oldsmobiles down through the middle of May, 1970?

A About three years, yes, sir.

Q Did there come a time when anything occurred in the business relationship as between Nabcor and Marty Motors?

A Yes.

Q Can you tell me what that was?

A We had a problem collecting on funds and discontinued the service after that.

THE COURT: What was that problem?

THE WITNESS: Some bad checks.

THE COURT: From whom?

THE WITNESS: The first came from Turco and I think it was rectified by Jenkintown, Pennsylvania.

Q You got a bad check from Turco?

A And there were insufficient funds and I think it was justified through Jenkintown.

Q You mean that Nabcor in Jenkintown made good on the Turco check?

A That is right.

Q After that did you get any further orders from Turco?

A No, sir.

Q Did anybody at the zone tell you to shut off Nabcor?

A No.

Q On Oldsmobiles or Cadillacs?

A No.

Q Then on your direct you said you were dealing with Nabcor as a leasing company, if you were dealing with them as a leasing company, what would be the warranty effect of that?

A No more warranty, just the same as a regular buyer.

Q If a customer of a leasing company had a warranty problem, to whom did they go?

A To any dealership in the United States or Canada, General Motors dealers.

Q Do you recall you were asked about a particular Cadillac transaction in which you said that the Nabcor people requested that you put it in the customer's name?

A I only recognize one.

Q Youcan only recall one?

A Right.

Q Do you recall anything about the circumstances of that which caused you to accommodate that request?

A Just because of the warranty, that it had to be in the name of the customer.

Q Was the customer also purchasing automobiles?

A No.

THE COURT: I don't understand that. If you thought Nabcor was the leasing company, why would you be agreeing to put the car in the name of the Nabcor customer?

THE WITNESS: I presume it has happened in the past, your Honor, where people have leased a car to a customer, and that is a thing that has happened in the last few years in our business in that respect, but I don't think it is unusual to ask the leasing company to put it in their name. I can cite instances.

THE COURT: In other words, the leasing company might --

THE WITNESS: Request it.

THE COURT: Ask that the title be put in the name of the customer of the leasing company?

THE WITNESS: Right, the name of the customer, their customer.

MR. KLEINBARD: I don't have any further questions.

THE COURT: I want to go to what you said about the checks.

The evidence is that Turco had his own company?

THE WITNESS: I would presume so. I only dealt with him through Nabcor.

THE COURT: you didn't deal with him with his own company?

THE WITNESS: No.

THE COURT: So the checks that came from Turco were for cars that Nabcor had ordered?

THE WITNESS: Right. Most of the checks came from Jenkintown, your Honor.

THE COURT: There were some checks that Turco gave that bounced?

THE WITNESS: Were not valid, no.

THE COURT: You say that Nabcor made the checks good?

THE WITNESS: Jenkintown, yes.

THE COURT: Happened after that? Did you keep doing business with Nabcor or Turco?

THE WITNESS: We severed all our relations as far as Marty Motors was concerned.

THE COURT: What form did the severance

take? Did somebody call Nabcor?

THE WITNESS: Certified checks or cash. We ended. We preferred not to do any more business.

THE COURT: Did somebody tell you that?

THE WITNESS: We decided we were not going to sell any more. It's our province to sell them or not.

THE COURT: Did they then ever submit orders that you refused?

THE WITNESS: No.

THE COURT: Did you say "We won't do business with you"?

THE WITNESS: In essence, yes.

THE COURT: Whom did you say that to?

THE WITNESS: Turco.

THE COURT: Who said that?

THE WITNESS: Me.

THE COURT: So you talked to Turco?

THE WITNESS: He was the only means of communication I guess for the entire three years, Turco.

THE COURT: So when this event came you talked to Turco?

THE WITNESS: Yes.

THE COURT: What did you tell Turco?

THE WITNESS: Certified check or cash, and that was theend of it. We never heard from him again.

THE COURT: Any more questions for this witness?

MR. KLEINBARD: Not from me.

$89:REDIRECT EXAMINATION

BY MR. PERSON:

Q How many bad checks were there?

A One. One or two. There was one or two or three checks.

Q Four or five maybe?

A Only on one car.

Q How many timed so you have to buy the car?

A He bought the car once and the check was not valid and he replaced the check; and the second time it was not good, and the third time it was made good in Jenkintown.

Q That's a terrible thing and you gave up doing b usiness?

A That's right.

Q No one else has bounced a check?

A Yes.

Q You gave up those customers?

A That's right.

Q Everyone that bounced a check you gave up?

A That's right.

Q How did you make this known to him?

A That's it, period.

Q You wrote them or called them up or what?

A I think he brought the check up.

Q At that point did you tell him you were happy to continue to do business with him?

A No.

Q You really didn't want to do business with him, did you?

A I just got through saying it was a certified check or cash. "Come over with that and we'll do business."

MR. PERSON: No questions.

THE COURT: We'll adjourn now until tomorrow.

(Witness excused)

$97:(Jury out)

THE COURT: I can't find the witness list. Does anybody have an extra copy? Whom do we have

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tomorrow?

MR. PERSON: Bano Buick and then I have some depositions to read. I will try to pull in some additional live witnesses. This thing is going faster than anticipated.

THE COURT: Let's not --

MR. KLEINBARD: Can we know who?

MR. PERSON: Mr. Snyder, Strimple, Bolling is the next three.

THE COURT: Let's get Snyder, Strimple and Bolling in tomorrow.

MR. KAPLAN: We were assured Strimple and Bolling would not be here until Monday so Buffalo counsel can be here.

THE COURT: How about Snyder then?

MR. PERSON: I'll try for tomorrow.

THE COURT: I think you have to bring your case to a conclusion. You have been at this a long time and I would expect you to rest by the middle of next week. You have to get going. There are efficient ways to get at this.

If there are any things about general procedures that you find have not been covered, I'm sure they can be stipulated and we do not have to have

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every witness get on the stand and start in with what is a fleet certificate and what are the requirements. If there were conversations where he said to Mr. Maiorana or to somebody at Nabcor, "You have to have a fleet certificate," or "You don't have to have one," or something like that, then, that, of course, you can bring out. You can being out everything that was said between these people. But I think that's about over with.

MR. PERSON: I would like to ask if we could have each of the warranties throughout the years '66 through '70.

THE COURT: What is the point of that?

MR. PERSON: I am claiming that they're illegal.

THE COURT: I don't think that's a jury question.

MR. PERSON: I think it's part of what they should consider.

THE COURT: For better or for worse we are going to cutthis case down, and this case depends, stands or falls, on whether you show a boycott participated in by General Motors, an intentional boycott of Nabcor, and that is the essence of the case.

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You have a number of other claims. I can't begin to even state whta is left and not left of the many, many counts in that complaint.

Of course those things have to be dealt with, but that is not what the jury is here to determine. They're not here to determine legality or illegality of some warranty practices, or general procedures. I suppose it's conceivable that in some cases a jury might be called upon to decide such matters, but it is my view that there is nothing as far as general procedures that raises a jury question here.

I believe we have discussed that before. I believe that's the position of General Motors. I agree with it.

Am I right?

MR. KAPLAN: Yes, your Honor.

THE COURT: It seems to me that you can have a situation where procedurally and technically -- I don't know how to phrase it at this point because I have not got an inventory of all the claims that are in the complaint, but it does seem to me that it's perfectly proper for the Court to say that there are some issues which are not jury issues: They raise purely questions of law.

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I suppose that if the Court found as a matter of law that General Motors was liable on any of those matters of law -- I guess you could have damage questions that might be jury questions -- but I don't think that's the way the case is heading.

I think it is safe, reasonably safe, to confine this jury trial to the question of whether therewas a boycott specifically directed at Nabcor which was sponsored or participated in by General Motors. If that question is tried, then the other things really are matters of law.

That's why I want to, and I think we should, get through every witness from now on with a minimum of questioning about general procedures. Let's get to their transactions with Nabcor,the conversations with Nabcor or General Motors, or whoever they would be able to testify about, and get this finished.

As far as damages, I think that a review of the transcript of Sunday night will show that the damage claims that were originally proposed, at least were proposed in the specification made by you, Mr. Person, over the weekend.

I think we can safely conclude -- and I know you will not be happy about this, but there is not

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going to be very much if any of those damage claims that can get to a jury. I have not heard all the case, but I've heard your proposals and you presumably know your evidence.

To the extent you didn't know your evidence, I have not heard any suggestion since then by way of coming forwrad and saying "Now I have figured it out." I have not heard anything else.

MR. PERSON: I am in the process.

THE COURT: This damage claim is not a matter of a lot of expert testimony. That long list of experts in your proposed witness list, that will have to be scrutinized. If your experts are going to testify about matters for which there is no factual predicate, we are not going to have the experts.

MR. PERSON: I wanted to show what other brokerage firms are doing as one basis for what Nabcor could have done.

THE COURT: What did the other brokerage firms do and how well did their brokers do? Were they out there licking stamps or were they getting tired of licking stamps? That's really the thing, and you have just continued to divorce yourself from reality here.

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I am saying that the plaintiffs' case, there is no use thinking about extravagant lists of experts and all that evidence. There is an absoluteness predicate for any claim of damages, and those are the things we talked about Sunday night.

If I hear any sensible suggestion of a different type of damage claim --

MR. PERSON: We had earnings in these years. To capitalize the earnings, that's --

THE COURT: "Based upon earnings"means nothing to me. Anybody after the first year of law school would know that if a company is put out of business by the activities of an antitrust violator, they can recover basically the value of that business. I happened to have tried such a case lastsummer so I know something about that.

But in that case the evidence was somewhat different from what we have here. Here we just don't go from some alleged purpose of General Motors or dealers and flop over immediately to end of business and damages. This the thing which you really fail to analyze. There are intermediate steps of causation that have to be scrutinized.

Even giving you the best possible view of

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your case it is not a matter where General Motors waves a wand or has a wish or has a board meeting or has a thought and then Nabcor vanishes. Your case is based upon a claim that there were steps taken by General Motors, and the steps didn't consist of going up and locking the door. The steps consisted, according to your case, of getting dealers to refuse to sell.

That brings us to the crucial question: What have you shown about dealers refusing to sell? And the corollary of that is, what have you shown about Nabcor not being able to buy? That, in itself, is a thing that has implications.

If you are saying that Nabcor was not able to buy, wasn't able to buy what?

Then you go back inevitably to what they were supposed to buy, what they needed to buy, and there you get to the absolute bedrock of this system, and that's the brokers. The bedrock of the system was not General Motors but the bedrock of the system was the brokers, and what orders did the brokers obtain and what did they forward to Nabcor?

So what was it that Nabcor was supposed to be buying? How much of those orders that Nabcor was

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supposed to be buying didn't they get?

That is, to my view, the case on damages, and unless we get down to brass tacks on that kind of analysis there is nothing to talk about.

A different case may have a completely different approach. Taxi Weekly had a completely different problem, completely different evidence, completely different approach, to damages and every case does, but this is your case.

Certainly if General Motors was doing something else -- if this were a case where Nabcor depended on large contracts, requirements contracts, or where Nabcor was accumulating big inventories so that if you shut off Nabcor's ability to accumulate the inventories that would be another case, but we have a case, in my view, where you start with this:

Nabcor was not accumulating inventories and Nabcor could not go out and sign a contract for 200 cars. They wouldn't know what to do with them. They never did. These were indications of interest, explorations, but the bedrock is: what orders did they get from the brokers? So what were the brokers doing?

MR. PERSON: I'm trying to make a point

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in terms of the effect upon Nabcor of the activities -- even when Nabcor gets an additional supplier, as it has testified it could do, it's the delays and the cancellations, and I think that's what you are referring to. I want to see that we are talking about the same thing.

THE COURT: Mr. Person, of course anything that General Motors caused that harmed Nabcor, if it consisted of delays, if it consisted of other impediments of any shape or form, certainly you have a right to show that, and there could conceivably be damages based upon it, but when we were talking Sunday night I didn't have any statement from you, and I would not expect you to produce any kind of argument like this, that at such and such a time there was a delay on a car and the sale was lost, and therefore we want to get treble the $50 profit on that car sale.

That's not what you were going over. You were going after millions of dollars based on enormous projections of the sales that brokers and so forth would have made.

So all of that depends on what was the sales potential of the brokers, because they were the people that were going to get the cars, and they were going to forward the orders to Nabcor and Nabcor's whole commission, all that stuff, is based on it. I'm not talking about franchises for the minute.

We are just repeating what we said Sunday. I certainly don't believe that I'm taking an unsophisticated narrow view of a damage claim in an antitrust case.

At the same time I do believe that a damage claim in an antitrust case has to be tied to some evidence that is relevant to the case and not just a discussion of what a brokerage system could do in the best of all possible worlds.

The question is: What was the status of this brokerage system? What if anything did General Motors do to impair, inhibit, delay, or what have you, this brokerage system?

And you really have not -- that was so lacking Sunday night -- you were not anchoring your arguments to this system and then saying what General Motors did to this system. Anything you could show along that line, fine, but you have got to start, not with some ideal arrangement that could have been created if you had had a bunch of John Wanamakers out there; it has to be something that really happened.

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That's my problem with you. I'm afraid that you are stuck with something in that the picture is not very good. That's not your doing or my doing.

MR. PERSON: We lost a lot of brokers. We'll prove that delays and cancellations did a lot of what we are claiming.

THE COURT: I've heard a lot of optimistic predictions before.

MR. PERSON: It's a matter of money. What happened to Nabcor is clear, at least we see it this way.

THE COURT: Just get the evidence and not the oratory, and that's what we'll hope for. No jury needs to be told by a bunch of experts that if General Motors prevent car sales they prevent car sales, and Ithink it's understandable and I know by now that a jury could understand that. I think they could have the first day. I could understand it. I don't think we need a lot of experts to tell us what the economic effects of that are.

If you have any basis for talking about the value of the business, any basis for having the jury find that the business was destroyed by General Motors -- certainly you may need an expert to talk

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about the value of the business.

I have to tell you right now I don't think there is a lick of evidence that would justify an expert getting on the stand and talking about the value of the business because this business was not destroyed by General Motors. There are enough car sales in here. The evidence is overwhelming about the number of cars that were procured.

Maybe somewhere you've got a case for some impairmant, some reduction, in the number of orders. I don't know.

I doubt very much if you can get on the jury or get an expert on the stand on this question of the destruction of Nabcor and the overall value of that business.

MR. EPRSON: A person doesn't have to lose every order; he can still get to be totally destroyed. If there is a certain inference at a point --

THE COURT: According to my understanding the maximum you have been able to come up with in any evidence I have heard is a loss of some 1/14 of the orders. That's a watery figure.

I keep asking you to come up with the evidence as to the number of orders Nabcor got versus the number

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of orders they were able to fill, and a net of how many orders they cannot fill, and you have not come up with that.

If you can't come up with that -- I don't know what more basic thing there is in this whole case. How can you talk about destroying somebody's business when you don't know how many orders they lost?

You have got to get this thing down in concrete terms, otherwise these experts are not going to get on the stand in my court. The jury is never going to hear them. They're not going to be presented with a lot of claims that would be sheer speculation.

We have talked enough. We have to get realistic and get this case pared down.

Goodnight.

(Adjourned to Friday, November 12, 1976, at 10:00 a.m.)

of Cadillacs from Marty Motors.

I hand Exhibit F to the jury.

THE COURT: We will take your word for it. The jury doesn't have to look at it.

Do you have your witness?

MR. PERSON: I want to offer some purchase orders.

THE COURT: What is the significance of this? I'm sitting here and I don't know why we have purchase orders coming here. We finished the witnesses from Marty yesterday. Why are we doing this this morning?

MR. PERSON: These are Nabcor documents to show that Nabcor ordered many Cadillacs from Marty Motors. The witness testified there was a single Cadillac --

THE COURT: It would have been nice to have them while the witnesses were here.

MR. PERSON: These are Nabcor's records.

THE COURT: You would not want to ask him about the transactions, would you?

MR. PERSON: I did and his answer was that he recalled one.

MR. KLEINBARD: He recalled one.

THE COURT: I think it is totally unfair.

Nobody even knew to cross examine. I think the stuff should be excluded. I think it is a breach of any kind of fairness.

I'm going to strike the exhibits.

We had two witnesses from Marty Motors yesterday. If there are any questions to be asked they should have been asked. I don't know what these mean in the absence of some witness. I can't expect the jury to flounder around.

675 and 676 are stricken.

(Plaintiffs' Exhibits 675 and 676 withdrawn from evidence.)

xx

CLARENCE URSO, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PERSON:

Q Are you affiliated with Bano Buick?

A I am.

Q How long have you been?

A Ten years.

Q What was your position ten years ago?

A I was the sales manager.

Q Whatyear did you start? In 1966?

A 1966.

THE COURT: You started as the sales manager?

THE WITNESS: Yes.

Q Were you here at all times when Mr. Martabano and Mr. Richard Penjer testified?

A Yes.

Q Do you recall whether there was anything in your opinion which was inaccurate about the testimony?

A I don't think so.

Q Do you recall when Bano Buick first started dealing with Nabcor?

A I would say it was around 1968, the early part of '68, if I remember correctly.

Q Do you recall having any communications with anyone either at Nabcor or at Marty Motors concerning dealing with Nabcor?

A The only person I had communications with was a Mr. Turco.

Q You therefore had no communications with Marty Motors concerning Nabcor purchases?

A I don't recollect.

THE COURT: May I see counsel at the bench.

(At the bench.)

THE COURT: Mr. Forester of the Anti-Trust Division is now delivering a letter dated November 12th from Mr. Wehrman, Chief of the New York office of the Anti-Trust Division which states that the Anti-Trust Division has found the documents apparently referred to in the receipt held by Mr. Murray. These are the documents Mr. Murray's firm had given to the Anti-Trust Division back in '67, and the documents are turned over to the Court.

Mr. Wehrman advises when the Court is finished with them the documents can be returned to Colonial Cadillac.

Thank you very much and convey my gratitude to Mr. Wehrman for his prompt work, and I will give these to the lawyers to see if there is anything relevant to their case.

MR. FORESTER: May I have a copy of the letter with some acknowledgement that they were received?

THE COURT: Yes. I will sign this.

(Pause.)

(In open court.)

T2

Q Mr. Urso, you were talking about the discussions with Ernie Turco, I believe?

A Yes.

Q Can you tell me --

THE COURT: I was paying attention to something else. When did you start dealing with Nabcor, early 1968? How did that come about?

THE WITNESS: I had a talk with Mr. Turco.

Q Where did that conversation take place?

A I imagine around 1968 some time in --

Q Your place of business or Mr. Turco's or elsewhere?

A Probably my place of business.

Q Can you recall what each of you said to the other?

A No, I can't.

Q Was the subject concerning the purchases of Buicks by Mr. Turco?

A I believe it was, yes.

Q Did the subject matter of Nabcor come up?

A I believe he said he was -- had a Nabcor franchise or whatever it was, and he wanted to buy cars for leasing purposes.

Q You can recall distinctly he said leasing purposes?

A Yes.

Q Did you ask him how many cars he had on lease at that time?

A I believe I did, because at that time in order to get cars for leasing purposes a party would have to be in the leasing business in order to procure cars from the Buick Motor Division.

THE COURT: Let me make a note on that. Will you read that last answer?

(Answer read.)

Q Was there a shortage of cars then?

A I don't think so.

Q What difference did it make whether a company was in the leasing business or not?

A I believe the reason for that is because cars purchased for lease insofar as the Buick Motor Division was concerned would have to go through the allotted lease cars in distribution.

Q In other words, you couldn't get any cars -- in other words, you didn't want to use your retail allotment in order to fill any orders for Nabcor?

A That is correct.

Q Was there any discussion of a fleet certificate for Nabcor?

A I don't remember.

Q Did you request that Nabcor or Ernie Turco supply you with a list of so many cars registered in the name of either Nabcor or Mr. Turco's company, Turco Auto Sales & Leasing?

A Yes, I did.

Q What was supplied to you?

A He gave me a list of 10 names.

Q 10 names?

A I believe it was 10 names.

Q What did you do with those names?

A Submitted to the Buick Motor Division.

Q Do you recall who you submitted them to?

A Just the Buick Zone Office.

Q Was this in connection with any application for a fleet rebate?

A No.

Q Did you ever make any application for a fleet rebate for any sales made to Nabcor or Turco?

A I believe at the time or during that time there was some application made for a rebate.

Q Nabcor or Turco?

A I forget who it was for.

no help. The witness doesn't know anything about them. I don't know what significance as far as this case is concerned there were orders for Buicks placed with Marty Motors, I have no idea. If you can bring that out, why, and it has some significance to this case, all right. But thus far you haven't.

MR. PERSON: 684 for identification.

MR. KLEINBARD: No objection.

THE COURT: Received.

xx (Plaintiffs' Exhibit 684 received in evidence.)

BY MR. PERSON:

Q Mr. Urso, do you recognize Exhibit 684?

A Yes. This is a complete file of a car sale.

THE COURT: A file of Bano?

THE WITNESS: A Bano car sale, yes, sir.

Q Do you know whose handwriting is on this 4th page of the exhibit?

A That is my handwriting.

Q Where it says Order No. 10157 underscorred?

A That is correct.

Q Take a look at 675, the first page.

Is that the same number?

A That is the same order number.

MR. PERSON: I would like to offer the purchase orders, Nabcor purchase orders, and have them admitted in evidence now, at least the first one, 10157.

MR. KLEINBARD: Again, for what purpose?

MR. PERSON: Well, there has been testimony already that there was no communication between Marty Motors and Bano Buick concerning Nabcor orders.

THE COURT: I don't think there has been such testimony.

Q To your knowledge were there any communications with Marty Motors concerning any Nabcor orders?

A Not really. This happened in 1968. I had to assume somebody called me and asked me to process the order, which I evidently have done.

THE COURT: He doesn't recall. He is not denying that it occurred. He is perfectly ready to assume that it occurred.

I don't know what this has to do with our case. There are lots of facts that happened in 1968 in the northeastern states that don't have to do with this action, I hope.

MR. PERSON: Mr. Maiorana has testified about the manner in which Nabcor acquired Bano Buick as a supplier. It was tied in through Marty Motors. I wanted to establish that this was in fact accurate.

MR. KLEINBARD: Assuming that is true, so what?

THE COURT: I say so what?

I don't know what this is about.

Let's get to something that has to do with your claim.

Q Do you recall how many transactions Bano Buick had with Nabcor from the beginning, in about November of '67 up to the end of the relationship?

A I would say about 25 or 30 cars.

Q Did there come a time at which Bano Buick and Nabcor no longer dealt with each other?

A Yes.

Q Do you recall whatyear that was in?

THE COURT: I don't know what we are doing here.

MR. KLEINBARD: Would you like to see the summary?

MR. PERSON: I have 33 orders.

MR. KLEINBARD: 33, yes.

MR. PERSON: I guess we can stipulate then that the last date of sale was October 9, 1970, prior to the commencement of the suit.

THE COURT: That is what is on Exhibit F?

MR. KLEINBARD: That's right, your Honor.

THE COURT: Next question.

Q Did you handle the last transaction that you had after the commencement of the suit?

A I don't understand your question.

Q Did you handle yourself, with Mr. Turco, the last transaction between Nabcor or Nabcor East and Bano Buick, the one that took place on February 11, 1971?

A I probably did.

Q Can you tell me how that transaction took place? Did you receive a phone call from Mr. Turco?

A I don't recall whether I got a phone call or a purchase order.

Q Do you recall discussing the suit at all?

A With Ernie Turco? I have not seen Mr. Turco in years.

THE COURT: I would like to ask this question:

These purchases that are referred to, were they purchases by Nabcor or were they purchases by Mr. Turco's company?

MR. PERSON: It is probably not too distinguishable.

THE COURT: As a matter of form, were the orders in the name of Nabcor?

MR. PERSON: I believe for the most part, yes. Only one appeared in the Turco police book.

THE COURT: I don't feeel comfortable "for the most part." It makes a difference to me whether the orders were placed by Nabcor or Turco's outfit. It seems to me the parties would know that.

MR. PERSON: Turco placed them in the name of Nabcor except in one instance where he placed in the name of his own company.

MR. KLEINBARD: The last order on Exhibit F is from Mr. Turco's business.

THE COURT: That is the Turco order then.

MR. PERSON: No further questions.

MR. KLEINBARD: There may be one or two others.

THE COURT: I will take it there is only one. That is the only indication I have.

MR. KLEINBARD: Excuse me, your Honor. Also on Exhibit F, there is one other Turco order, page 3.

MR. PERSON: I have another question.

BY MR. PERSON:

Q Did you have a communication with the Buick Zone concerning any of the orders for Nabcor or Nabcor East?

A No.

Q Did you have any discussions with any people of the Zone?

A No.

MR. PERSON: No further questions.

CROSS EXAMINATION

BY MR. KLEINBARD:

Q I show you what I have marked as Defendants Exhibit N-6 for identification. I represent that this is a summary of your various transaction folders with Nabcor or with Mr. Turco. Would you look at it and see if that conforms with your recollection or if you want to look --

A I believe this is a recap of all the orders that we processed.

MR. KLEINBARD: I would like to offer that in evidence, your Honor.

THE COURT: Any objection?

MR. PERSON: I would like to reserve an objection. I would like the time to verify the information.

THE COURT: We will assume this is correct. Received.

(Defendants' Exhibit N-6 received in evidence.)

xx

MR. KLEINBARD: I am having copies distributed to the jury, your Honor.

(Pause.)

Q You were questioned, Mr. Urso, about a change in price at some particular time with Nabcor. Is it a fact that there was no uniformity of price with respect to thie sales between Bano Buick and Nabcor?

A I believe all the prices were very uniform. In some cases they were a little higher and a little lower.

Q You didn't charge the identical markup on each car, did you?

A No.

Q If you look at Defendants' Exhibit N-6, the markup that is listed there in the last right-hand column, it shows a variance both up and down?

A Yes.

Q You have heard here the suit was commenced on or about December 10, 1970.

I direct the Court's and jury's attention that there is a sale here on February 11, 1971, which would be after the date that Bano Buick was sued in this very action.

Do you know anything about how GM allocated Buicks during 1968 to 1970?

A No.

Q Any testimony you may give on that subject would be guesswork on your part?

A Yes.

Q Did you ever discuss Nabcor with the factory?

A No.

Q Did you communicate a list of automobiles and serial numbers which you received from Turco to the Buick Motor Division?

A Yes, I did.

Q I show you a letter dated January 15, 1968, which I have marked as Defendants' Exhibit O-6, and I ask you whether this is the document to which you refer?

A Yes. I communicated about this.

MR. KLEINBARD: I offer the document, your Honor.

THE COURT: Any objection?

MR. PERSON: No objection to this, your Honor.

THE COURT: Received.

(Defendants' Exhibit O-6 received in evidence.) xx

MR. KLEINBARD: I want to distribute this to the jury, your Honor.

(Pause.)

MR. KLEINBARD: I direct the jury and Court's attention to the first sentence of the letter.

(Mr. Kleinbard read to the Jury from Defendants' Exhibit O-6 in evidence.)

Q Did you supply that to the Buick Motor Division for the purpose of enabling you subsequently to obtain fleet allowances?

A No. I think to get fleet cars.

Q Do you know?

A I don't know really but I would have to assume that.

Q Don't assume either for me or Mr. Person. If you know, fine, but if you don't know, don't assume.

You did apply for an allowance, did you not?

A Yes.

Q From the factory?

A Yes.

Q In so doing did you indicate that the purchaser was Nabcor, Inc.?

A Yes.

Q I show you a document, P-6, and I ask you whether you can identify that.

MR. PERSON: I have no objection to this if you are offering it.

MR. KLEINBARD: I want the witness to identify it.

THE WITNESS: I can identify it.

THE COURT: Are you offering it?

MR. KLEINBARD: Yes.

THE COURT: No objection to its being received.

(Defendants' Exhibit P-6 received in evidence.)

xx

Q Can you tell us what this document is?

A This is a form or an application to get a rebate back from the factory on a car that was sold to Nabcor.

Q On one car or more than one car?

A Two cars.

MR. KLEINBARD: I direct the Court's and Jury's attention to the fact that the name Nabcor appears both on the first page and also on each of the next two pages.

Q Did you receive purchase allowances from Buick?

A I believe so.

Q I beg your pardon?

A I believe we did.

(Mr. Kleinbard read to the jury from Defendants' Exhibit P-6 in evidence.)

Q Underneath the selling dealer is your name?

A Yes.

Q Whose signature is up above?

A I believe that is Ernie Turco's signature.

Q I think I asked you whether you received purchase allowances from the factory for these cars sold to Nabcor.

A I believe we did.

Q I show you Defendants' Exhibit Q-6. I ask you whether you can identify that for us.

A I can identify this.

Q What is it?

A These are credit memorandums from the Buick Motor Division to Bano Buick.

T4 Q How many are there in number? How many Buicks referred to on these?

A Seven in total, six Nabcor and one Avis Rent-A-Car, I believe.

MR. KLEINBARD: I offer it in evidence, your Honor.

MR. PERSON: I have no objection, but I would like to say that I have never seen these before. Apparently they are interesting and I would like to pursue some of these matters.

THE COURT: Well, I am happy we are having Avis.

MR. KLEINBARD: I am not going to pursue the Avis line, your Honor.

THE COURT: It is just one piece of paper, but --

MR. KLEINBARD: I am offering it for a reason which will come out in view of my next question.

THE COURT: Received.

xx (Defendants' Exhibit Q-6 received in evidence.)

Q On your direct examination, Mr. Urso, I believe you were asked a question which indicated that you had received an allowance on the sale of two Buicks and we have now produced Q6, which indicates that you received allowances for a greater number of Buicks.

Does that help you to come to a determination as to whether six years after the events all of your records are in perfect condition or whether some of them perhaps might be missing?

A There may be some records missing.

Q Did Bano sell Nabcor every car Nabcor ordered?

A I believe we furnished every car ordered by Nabcor.

Q Do you have information of any orders that they placed with you that you didn't fill?

A I can't think of any.

Q Is it your testimony that the termination of this relationship came about from the cessation of the receipt of orders by Bano?

A I believe so.

Q From Nabcor?

A I believe so, yes.

Q Did you ever get any suggestion or direction from any section of General Motors to the effect that Bano should not sell cars to Nabcor or Nabcor of East New York?

A No, sir.

Q In the determination of price which you fixed and which is reflected in Defendants' Exhibit N-6 on each of the transactions with Nabcor, did you have any instructions, directions, from General Motors or were these determinations of yourself and someone in Bano Buick?

A Determinations of Bano Buick.

MR. KLEINBARD: I don't have any further questions.

THE COURT: Any redirect examination?

MR. PERSON: Yes.

REDIRECT EXAMINATION

BY MR. PERSON:

Q Is your Buick zone a different zone from the Oldsmobile or Cadillac zone in which Marty Motors is located?

A Yes.

Q Do you recall that Marty Motors stopped dealing with Nabcor at a particular point?

A I don't recall.

Q In other words, there was no communication between you and Marty Motors concerning Nabcor or Turco in connection with any cessation of activities?

No discussion by Mr. Martabano of Marty Motors to the effect that there was a bad check or something made good in any discussions?

A No discussions.

Q In fact, isn't it true that you continued dealing after Marty Motors stopped dealing with Nabcor?

MR. KLEINBARD: Your Honor, he doesn't know.

Q Exhibit F shows there was a lapse, on the last page, page 4, that the last transaction with Marty Motors in which they testified there was some kind of bad check made good was May 21, 1970.

I see that Bano Buick in a different zone, different type of automobile, had continued its relationship with Nabcor subsequent to that. Isn't that correct?

MR. KLEINBARD: I object to that. The record shows what it shows. This witness has testified he doesn't have direct knowledge.

THE COURT: He can use it to refresh his recollection.

Do you know when Marty Motors, anything about whether or when Marty Motors stopped dealing with Nabcor or Turco?

THE WITNESS: No, I don't.

THE COURT: Did you have any communications or conversations or did you get any information about such an event?

THE WITNESS: No, I didn't.

THE COURT: I think you said you don't recall hearing anything about any bad check problems at Marty?

THE WITNESS: First I heard of it was yesterday.

Q Mr. John Martabano at the time was interested or had a financial interest in each of these dealerships?

MR. KLEINBARD: I object to it, there is no foundation.

THE COURT: He is being asked.

A I heard it yesterday that he had an interest in it.

Q You didn't know that before?

A No, sir, I didn't.

Q Did you ever visit Mr. Turco's place of business?

A No, sir.

Q Did you ever talk with him about whether he was leasing cars or not?

A Yes, I talked about leasing cars.

Q Did he mention Carvel as a lease account to you?

A I don't recall.

Q How many applications do you recall that you put in for fleet rebates for Turco or Nabcor specifically?

A Eight or ten.

Q How many cars did Nabcor or Turco buy from you?

A 33.

Q Don't you recall having made application for these other cars?

A Possibly the applications for rebates may have been on for the year 1968 because they don't continue this forever.

Q They continue to the model year 1970, I think.

MR. PERSON: Isn't that correct, Mr. Kaplan?

MR. KAPLAN: The program existed.

MR. KLEINBARD: I object in terms of this witness's knowledge.

THE COURT: That is all right, if he knows.

Q You don't know whether you submitted applications for fleet rebates for each and every vehicle for each and every vehicle for a company that you believe was a qualified leasing company? Any reason?

THE COURT: Are you making a statement?

MR. PERSON: I am asking.

THE COURT: Then ask your question. You can ask about this.

A Do you mean --

THE COURT: There isn't any question. Let Mr. Person frame a question.

Q The $50 rebate application, one of them was as to a car delivered on 12/26/68, No. 54333.

Another one was on a car delivered 5/31/68, motor No. 09198.

I see that you had various sales from Turco or Nabcor prior to this time to which no application for a fleet rebate was made.

Do you have any reason why?

A I don't recall the area of time that you are speaking about. The only thing that I can say about these rebates in reference to Buick Motor Division, the time element involved is they possibly may have only had it for the year 1968.

Q Here is one that is dated July 31, 1970, a 1970 Buick fleet allowance which you kindly provided us.

A They may have had it in 1970, I don't know.

Q We have them in 1968 and 1970, cars in the middle, for which you made no application apparently, and cars before.

MR. KLEINBARD: I don't believe the witness testified that he made no application.

THE COURT: There is a simple way to ask some questions.

Q Why for cars delivered in 1969 are there no fleet rebate applications?

A I don't know, sir.

Q Is it possible that Turco had cars on lease?

A In 1969? I don't know. I had to assume he had them on lease because he was purchasing from us for a lease purpose.

Q Was it your duty to find out that he was?

A That he was leasing?

Q Yes.

A Not really.

Q As I understand, didn't you have to make a representation to the factory? Didn't you sign this thing?

A I signed the letter that he was leasing cars. Apparently I took it at face value. We don't go ahead in each case and find out if he leases the car.

Q "The undersigned certifies that the specified vehicle herein will be used in lease or in rental" and I see your signature down below.

A That's right.

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Q There is a signature up above. Have you signed this signature for a purchaser for a fleet program?

A No.

Q You testified that is Mr. Turco's name that was not signed by you on this Defendants' Exhibit P-6? Let me show it to you.

A Not my signature. Here is mine.

Q That is not your signature?

A No, sir.

Q You obtained that from Mr. Turco?

A Yes.

Q After you found out the information, sufficient information for you to conclude that he had cars on lease, correct?

A If he purchased cars from me, sir, and we applied on the lease plan, his cars had to be on lease.

Q How do you know that?

A We take his word for it.

Q So that he told you that he had cars that were on lease but as to others he did not make that representation, is that correct?

A I don't know.

Q Do you recall?

A I don't recall.

Q You said you have a number of records missing. Is that another production to the Justice Department, by any chance?

MR. KLEINBARD: I object to that, your Honor.

A I don't know of any records that I have missing.

Q I thought you said there may be some records missing?

A There possibly could be records missing.

Q But you don't know of any?

A I don't know of any.

Q Was there any production to the Justice Department?

A What?

Q Any documents produced to the Justice Department?

A By me?

Q Yes.

A No.

Q Did Bano Buick during 1967 through 1970 have a fleet department?

A No.

Q Did it engage in any fleet sales?

A Only as they came in.

Q To Avis, for example?

A Avis, they send the orders in.

Q What price did you charge Avis?

A I have no idea.

Q Was that a fleet price that you would --

A Fleet prices was made up sort of individually as orders come in. There is no such thing as a set fleet price.

Q But how much do you recall that you charged Avis?

A I don't know, sir.

Q $50, would that --

A $50, $100.

MR. KLEINBARD: Your Honor --

Q $50 over?

A Possibly. It could be $100.

THE COURT: If there is an objection, I would be receptive to sustaining it.

MR. KLEINBARD: I was trying to make one.

THE COURT: Sustained.

Q Do you recall what you were charging Nabcor, a fleet price or not?

A I believe I charged --

MR. KLEINBARD: I object. He testified as to what he charged, and it is on the record.

MR. PERSON: I am asking what the amount was.

THE COURT: I will overrule the objection. I think he answered it. Any more questions?

Q I didn't hear.

A I thought I gave him a fleet price.

Q You were charging Avis $100 over?

A Yes.

THE COURT: I don't understand there is any claim in this case under any theory which would involve any differential of price between Avis and Nabcor.

MR. PERSON: Except one thing, and that is:

Q Were the cars that were ordered from Nabcor taken out of your retail allotment?

A Some of them might have been.

Q Those were the ones for which you made no fleet application?

THE COURT: The might have beens and possibilities, it is a long time ago. You testify as to what you remember and when you don't, say you don't remember. The might have beens and possibilities are really of no use to us.

A I don't remember.

Q You mentioned the necessity of having cars on lease in order to get a fleet allotment, is that correct?

A Yes.

Q Is that true?

A Yes.

Q If there were cars that did not qualify for fleet allowance --

THE COURT: You are talking about a fleet allotment or allowance?

MR. PERSON: I mentioned the allowance -- I am sorry, I mentioned the allotment.

I am trying to see the relationship between the two.

BY THE COURT:

Q Mr. Urso, it is very important to testify as to what you remember and not jump to any conclusions or anything. We have enough problems in this case now.

Were you familiar with something called a fleet allotment? Was there such a thing?

A I don't recall.

Q This list that you gave to Buick Motor Division, the letter, you signed the letter of January 15, 1968, right?

A Yes, sir.

Q Do you recall why you gave it to the Buick Motor Division?

A I believe that came about in order to get extra cars to fill whatever orders were for this Nabcor, it would be fulfilled. Otherwise they wouldn't give us any extra cars.

Q When you say extra cars, go very slowly -ecause we don't know your business and you do, of course. Just talk to us as if you were talking to a three-year-old.

A It is the quota.

Q What quota would that be?

A The number of cars you got per month, 50 cars a month, or if you needed five extra cars on lease, they gave you five extra cars.

Q Do you remember were they in fact limiting you to a certain number of cars or could you get all the cars you wanted? Do you remember that?

A I don't remember.

Q Are there times when you get all the cars you want?

A Yes.

Q And times that you don't get all the cars you want?

A Yes.

Q Those are the times when you have to worry about selling out and getting some extra cars, right?

A Right.

Q Do you remember whether this time in 1968 was such a time or not? Was there a short supply or don't you remember?

A I don't remember, sir.

Q But do you remember whether -- this is repetitious, but let me repeat.

The letter you sent of January 15, 1968, do you remember whether that had to do with the question of shortages or allotments or anything like that? Do you remember?

A I don't remember, sir.

Q Do you remember whether it had to do with the possibility of getting fleet allowances for Turco?

A No, not fleet allowance.

Q It wouldn't have to do with the fleet allowance?

A No.

Q Because you make those on an individual basis?

A Right.

Q If it had to do with anything it would be with the allotment?

A Yes.

Q Have you heard of such things called a fleet allotment? Is that a term you have used?

A Not with Buick.

Q Have you heard of a thing called retail allotment? Is that a term you have used?

A Allotment would be the allotment that would be basically retail.

Q Then if you got any more for particular leasing customers, that would be something over and above?

A Over and above the allotment.

THE COURT: All right, go ahead.

BY MR. PERSON:

Q And cars for Nabcor would have to come out of retail unless you could get an extra car?

A That's right.

Q That is correct?

A Yes, sir.

Q Did you speak with anyone at the factory concerning getting any extra cars for Nabcor?

A I don't think so.

Q You were willing to sell to Nabcor out of your retail allotment?

A Yes.

Q Did there come a time in your relationship with Nabcor in which your retail allotment was being used up by your regular retail customers?

A I don't think so.

Q So you never used up your retail allotment?

A Never used up my retail allotment in relation to what?

Q Selling it out.

Had you ever used up your retail allotment for a month?

A Yes.

Q At that time had you ever had any orders for fleet sales you could not fulfill because there was no fleet allotment.

MR. KLEINBARD: Objection.

THE COURT: I will allow it.

A I would have to say no.

Q So that every company seeking cars has been able to get a fleet allotment because you had sufficient retail allotment to provide all the cars; is that correct?

A I would think that would be correct.

Q Is that true even though Nabcor did not qualify for a fleet allotment?

MR. KLEINBARD: I don't understand the question, your Honor. There is no foundation laid that this witness --

THE COURT: Nabcor had said before the letter of January 15th they were a leasing company. That is what he has testified to.

Q You never got any cars for Nabcor from the fleet allotment, is that correct?

A We probably did.

Q Did you apply the --

MR. KLEINBARD: Your Honor, the witness is not to guess.

A I don't recall.

Q Have you ever applied for an extra car through this extra allotment for any company?

A Yes.

Q Why?

A In order to get the car.

Q Because you were running out of retail allotments, right?

A Yes.

Q And if you have enough retail allotments you use those to fill your fleet orders?

A Yes.

Q There were times then in which you did have a shortage of retail cars?

THE COURT: He said that.

A Yes.

Q And if Nabcor was not eligible for a fleet allotment what would you do?

A We would use one of our retail cars.

Q Even though you had retail customers for it?

THE COURT: This is all speculation.

MR. KLEINBARD: I object, your Honor.

A Yes.

MR. PERSON: I have no further questions.

RECROSS EXAMINATION

BY MR. KLEINBARD:

Q Were you able to get all the cars you needed from General Motors to fulfill Nabcor orders?

A Yes.

MR. KLEINBARD: No further questions.

FURTHER REDIRECT EXAMINATION

BY MR. PERSON:

Q Was there any delay in your receipt of cars for Nabcor?

A No.

MR. PERSON: No further questions.

THE COURT: You may step down.

(Witness excused.)

$97:THE COURT: Call your next witness.

MR. PERSON: Your Honor, I am going to read the transcript of Peter Anthony Gordon.

THE COURT: Who is he?

MR. PERSON: The executive vice-president of the Greater Long Island, New York and Westchester Automobile Dealers Association.

THE COURT: We will excuse the jury for their recess.

(Jury leaves courtroom.)

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MR. KLEINBARD: The reason I asked for a side bar, your Honor, was I was going to object to the reading of any of the testimony of Peter Gordon who was connected with the Greater New York, Long Island, Westchester Automobile Dealers Association.

Your Honor has already allowed a reading of the two letters which this exhibit, at least the letter that this deposition leads up.

For background purposes with respect to the examination of the witness Dillon, there were obviously a good number of people at that meeting but we were not at that meeting. That is clearly established by Mr. Gordon's testimony and Mr. Dillon's testimony. By "we", I mean there were no General Motors personnel present. I think if we are going to have a continuing repetition of this letter when it is not offered to impeach anybody in particular -- and even if it were -- we have considerable prejudice in front of the jury.

For that reason I object to reading from the deposition at all.

THE COURT: Sustained.

MR. PERSON: Your Honor --

THE COURT: Where is Mr. Snyder? Let's

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get on with your witnesses. Are you going to bring Mr. Turco in?

MR. PERSON: May I address myself to this?

THE COURT: Go ahead.

MR. PERSON: We have established that the Greater New York, Long Island, Westchester Automobile Dealers Association and Ruckle Pontiac were in a conspiracy in connection with this. This transcript will show that.

Also we have shown Mr. Dillon of Ruckle Pontiac had factory contact concerning Nabcor immediately after --

THE COURT: I don't recall that Ruckle Pontiac is a defendant before this jury.

MR. PERSON: The question of who is a defendant is not the issue. It is a question as to whether they were a co-conspirator, and Ruckle Pontiac is a named co-conspirator.

THE COURT: What is the evidence that there was any conspiracy between this association and General Motors?

MR. PERSON: The contact is through Robert Dillon. That has already been introduced into evidence.

THE COURT: I sustain the objection.

MR. PERSON: In addition, the transcript itself, in other words the evidence concerning --

THE COURT: Does the transcript show anything about General Motors? Does it show that General Motors people were present at the meeting or that General Motors people were in touch with this association to, in some way, vis a vis Nabcor or any of the plaintiffs here --

MR. KLEINBARD: To the contrary, your Honor.

MR. PERSON: It said they were directing the executive vice-president to communicate with the NADA for the purpose of --

THE COURT: It said what?

MR.PERSON: The transcript shows at this meeting -- and we have the minutes in evidence, partial -- it said at that meeting that the executive director, Mr. Gordon, was requested to communicate with the NADA for the purpose --

THE COURT: Who is that?

MR. PERSON: National Automobile Dealers Association -- for the purposes of having that group take action with the factories concerning Nabcor.

THE COURT: Do you have any evidence that connects this up?

MR. PERSON: Yes. One of the persons at the meeting had factory contact with GM.

THE COURT: I am sure they had a lot of factory contact but did they make it?

MR. PERSON: Concerning Nabcor, discussing the Nabcor franchise and Mr. Dillon giving orders the following day not to do any more business with Nabcor.

THE COURT: When was the meeting --

Dillon referred to a fellow named McNamara. Who is he?

MR. KLEINBARD: He is a friend of Dillon as far as I know. I don't know what his present job is.

MR. KAPLAN: He was at the time in the Pontiac Zone in New York.

THE COURT: Are you going to call him?

MR. KAPLAN: We have not decided.

THE COURT: Are you,Mr. Person?

MR. PERSON: He is not on the witness list. I would like the opportunity --

THE COURT: The thing is, Mr. Person, if there was something at the heart of the case, then

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the peripheral matters might be something to be lenient about. But I don't see anything at the heart of the case. I am much more concerned than I would be in a normal litigation.

We all know in a conspiracy case there is a fair amount of liberality. There is a certain degree of liberality in a criminal case because you know that a real bona fide conspiracy, if you can call it that, is not done in the open. You know there is subterfuge. You know in order for the Government to prove a conspiracy very often there has to be proof of a lot of seemingly disconnected things that go on, but there is a limit, and I have really never had a conspiracy case where there is everything at the outer boundaries of the periphery and nothing of any solid nature at the heart of it.

All this peripheral stuff is of concern to me.

MR. PERSON: I don't see where it is peripheral. In other words, the relationship or the transaction between Mr. Dillon and Mr. McNamara inferentially shows there was a conspiracy and that it was acted upon. Therefore, Mr. Dillon's relationship with the ADA, the Automobile Dealers Association, when they conspired, is certainly the tie-in that allows this deposition to be read. I think it is critical.

THE COURT: What is the chronology? When was the meeting?

MR. KLEINBARD: December 14th.

THECOURT: Of what?

MR. KLEINBARD: 1966.

THE COURT: December or September?

MR. KLEINBARD: December.

THE COURT: When did McNamara come to see Dillon?

MR. PERSON: Ruckle Pontiac stopped dealing with us in February or March, several months later.

MR. KLEINBARD: He came to visit him over Thanksgiving, your Honor.

THE COURT: You are saying at this meeting there was a suggestion that someone should contact the factories?

MR. PERSON: Correct.

THE COURT: And Dillon was there, and you want to assume that this led to somebody from this association going to see the factory and the factory sending someone to see Dillon who had been at the meeting?

MR. PERSON: We want to show the activities of the Automobile Dealers Association as a co-conspirator.

MR. KLEINBARD: There is an assumption being made here. The minutes talk of contacting the NADA. There has to be a tie-in from NADA to the factory. This witness was specifically asked whether he ever forwarded this information to the NADA and he said that he had no such personal recollection, page 59, and he also stated earlier there was no personnel at the factory --

THE COURT: This is a local dealers' association, right?

MR. PERSON: Yes.

THE COURT: The NADA would be a national group.

Dillon was at this local dealers' association meeting in December of 1966.

MR. KLEINBARD: He testified that he told Stewart to stop dealing with Ruckle before that meeting, if you will recall, your Honor.

MR. PERSON: It is also construed that

that the meeting occurred at the time that the refusal took place, which was in March of '67, through the testimony of Mr. Stewart, that he stopped immediately.

THE COURT: Let's not pin too much on Dillon's chronology. I think as to Dillon and Stewart one could find that they were not completely precise in every detail. Let's take your argument.

You have Dillon at a meeting of the local association. The local association says, and the minutes show, that they referred the matter to the national organization for action with the factories. It is connected with the call by McNamara to Dillon?

MR. PERSON: It does not have to be. If you show --

THE COURT: Wait a minute. Something has to be logically connected with something or else we are just having a lot of miscellaneous items thrown at this jury.

You pose a hypothesis that is contrary to minimum if there is one, but I thought this is what you were suggesting to me: That this meeting led to some action on the part of the factories. You said it was connected up. You would assume it might have been connected up with the McNamara talk with Dillon.

MR. PERSON: Yes.

THE COURT: That strikes me as somewhat odd. Dillon is at the meeting. The local association refers it to the national association. Let's suppose the national association goes to the factories and then under the chain of activity that you were posing earlier this would have meant that GM would have gotten McNamara to see Dillon.

Why does he have to get visited by McNamara as a result of this inquiry by the national association which was a result of the inquiry by the very local association Dillon is a member of?

If Dillon doesn't want to deal with Nabcor and if the members of the local association were in cahoots not to deal, I don't think Dillon has to get told by General Motors.

MR. PERSON: Dillon was dealing with us until he had the communications at his home with the factory official.

THE COURT: That doesn't strike me as having anything to do with the local organization.

MR. PERSON: He was at the meeting. A group

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of people are conspiring at this meeting to get Nabcor, and then on our version of the subsequent one of the members at the meeting, a director of this group, meets with a factory official at his home, discusses Nabcor in derogatory terms, and then terminates the business relationship.

THE COURT: You move very quickly.

MR. KLEINBARD: Even in the pretrial brief it mentions Thanksgiving. It is not after but before the meeting. Besides, is there a lead from the national association to the factory? There is no evidence to that effect, to the extent it impeaches Dillon.

THE COURT: I am concerned about reading a deposition about an association where I am wondering about the connection. I asked you about a connection with GM and the only connection you have told me about is the statement -- two connections: The statement in the minutes that the NADA would receive the matter, and they were supposed to go to the factories. There is no evidence that the NADA received any word. There is no evidence that the NADA went to the factories, and we are having a lot of testimony about an association

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where there is a suggestion that something might be done; there is no evidence that it was followed up. There could be evidence. You could have taken the deposition of somebody at the NADA. You could have inquired. Have you ever tried to find out if this was followed up?

MR. PERSON: My recollection was that you quashed that subpoena. I think you terminated that one.

THE COURT: That is an answer.

MR. KLEINBARD: I don't recall that.

THE COURT: Where is the NADA?

MR. PERSON: That was in Washington D.C. We served a subpoena.

MR. KAPLAN: My recollection of the facts concerning that are that the NADA --

THE COURT: I somewhat doubt if this was presented to me in the way it is being presented now. However, maybe it was.

I'm sorry, go ahead.

MR. KAPLAN: My recollection of the facts -- and I may be in error because it is a long time ago -- is that the NADA was listed on one of Mr. Person's notes in something on the order of 100 witnesses.

Your Honor told him not to start with Donner or Roche, but with somebody who more likely would know something. I think that it was September of '74. Mr. Person then deposed five people from GM and then went on deposing and deposing. He was never blocked from taking that deposition.

THE COURT: What does the deposition show? I am concerned about a vertual philibuster.

MR. KLEINBARD: The bottom line is that Mr. Gordon says that -- referring to that last sentence of the minutes -- the matter of Nabcor is referred to NADA for action with the factories.

The question was asked:

Do you have any personal recollection of any such reference of a matter to the NADA and the answer: "No, I do not."

THE COURT: I think it is really of neutral value. I don't think it is going to help anybody. I don't think it is going to hurt anybody.

MR. KLEINBARD: It is prejudicial to us if the minutes get read and read over and over again to the jury. It was already read once.

THE COURT: What other evidence do you have? When is Mr. Snyder getting here?

If we have to adjourn early today, we will adjourn early. I don't see any reason to just use fillers. I don't have time for that and neither do you.

Maybe the thing to do if we adjourn early, we should sit together and hammer out something. I want to know where we stand on this thing about the cars.

I have asked you, and this should have been prepared years ago. I think it is crucial. I think it transcends any evidence about conversations.

The important thing is what orders were sent in and the whole trend. I think you can practically construct the chronology here of the kind which Mr. Kaplan began to get into on the cross examination of Anthony Maiorana. That was very illuminating to see the trend of the needs and the dealers dealt with. That began to put something together. There may be more to it. I'm sure there is.

MR. PERSON: Nabcor could always get new sources of supply. That was not revealing.

THE COURT: Fine. Then that is the end of the case as far as I am concerned.

MR. PERSON: The delays, the cancellations, the loss of the customers, the loss of the brokers --

"Q Was the fleet section under your supervision directly or indirectly, when you were president; the fleet and government sales section?

"A Indirectly under my jurisdiction, yes.

"Q Do you know who the head of it was when you were president at the beginning back on June 1, 1965?

"A Well, the vice-president in charge of distribution staff who had the responsibility was Mr. Crawford, but I don't recall at this time who was the head of the fleet section.

"Q He was head of the marketing staff at that time?

"A Itwas called the distribution staff at that time.

"Q Who was Mr. Feely, Emmett Feely?

"A He was a member of the marketing staff during that time frame.

"Q Do you recall ever consulting any of the legal staff concerning a company called Nabcor back in 1966?

"A I don't recall discussing it with them directly.

"Q Or communicating --

"A I would do that through Mr. Crawford."

"A I don't recall. It seems to me it did, but I don't recall specifically.

"Q Can you please look at this provision at page 4. It's Subdivision B in parentheses under Paragraph 4 on page 4.

"A Yes."

I will now read --

THE COURT: You don't have to read that.

MR. PERSON: Don't read that portion?

THE COURT: I am allowing this, it is very marginal, but just read this.

MR. PERSON: "Q Can you recall having read that paragraph before at or around the time of the injunction?

"A I don't recall specifically having read it, but I would read something like this in connection with my responsibilities, I am sure I read it at the time, but I don't recall it at this point.

"Q Do you believe that there is some type of compliance program of General Motors in connection with that and other paragraphs in the injunctive part of the judgment?

"A As a responsible corporate citizen of the United States, General Motors always tried to comply with the legal actions with which we were confronted.

"Q Do you have any idea what the compliance attempt was, going back to 1966? What specific activities are you aware of which were part of GM's attempt to comply with this ijunction?

"A Again, this happened a long time ago, but our normal procedure would be to make certain that our people, who had a responsibility for carrying out these policies, were familiar with the problem and the proper procedures to comply with the injunction or the order, and also to make certain that anybody else, perhaps the dealers, woud be so advised of our position in the matter.

"Q Do you know of any requirements for persons in General Motors who became aware of possible violations to report these possible violations to any specific officer or other person of General Motors, back in 1966?

"A You mean a violation on the part of some General Motors employee of the order?

"Q Yes.

"A Well, I think all employees were instructed that we would want to comply with the order, and if there was any reason or anything came up in connection with it, that they would report this through the line organization for appropriate study and action."

Page 25, line 9:

"Q Do you know whether the fleet and government sales section was advised with respect to this injunction?

"A I am sure they were. I can't speak from my own personal knowledge at this point, but they would be, in the ordinary course of business, advised.

"Q If the fleet and government sales section had any problems concerning the injunction as to possible questions arising under it or possible violations, is there any officer of GM which the fleet and government sales section should have reported that to?"

There is some colloquy by counsel.

THE COURT: That question was interrupted by the colloquy. What is the next question and answer you want to read?

MR. PERSON: Page 26, line 21:

"Q Were you aware of any compliance programs that differed between those two different paragraphs at any time?

"A No, I am not familiar with the actual administration of how this was handled, no.

"Q Was there any one person in charge of compliance as soon as this injunction was entered, other than a lawyer for General Motors?

"A Well, as I say, the ordinary procedure for handling things like this would be to advise our employees who had occasion to deal in these matters, and also to the extent that the dealers might have been involved to make sure they were familiar with our policies and in what we were trying to do, and then if there were any problems that might arise in connection with either one of those activities, depending where that problem might surface, it would go on up through the line organization for whatever disposition seemed to be appropriate."

Page 31, line 24:

"Q What was your position on December 18, 1967?

"A I was chairman of the board of directors of General Motors.

"Q Did you have an office in New York?

"A Yes, I did.

"Q In the GM Building?

"A Yes.

"Q Was Mr. Belcher your assistant?

"A He was in the office.

"Q Was he your assistant at that time, designated as an administrative assistant to you?

"A I wouldn't call him an administrative assistant, no. He was a person in the office that primarily handled service complaints that were directed to the New York office.

"Q Did he have authority to handle matters on his own?

"A No, he did not.

"Q Did he turn matters over to you?

"A It would depend on what it was.

"Q Were there any guidelines for what he would turn over?

"A No. There were no established guidelines as to what he would turn over.

"As I indicated, Mr. Belcher's prime responsibility was to handle service complaints that came into the office, and he would turn those complaints usually over to the division, car division or other division that might be involved for disposition."

Line 19:

"Q Did you see everyone that asked for you?

rp14 "Roche

"A No, I did not.

"Q Did you have a screening mechanism?

"A Through a receptionist, yes.

"Q And was Mr. Belcher part of the screening system that you had?

"A No. Well, yes, perhaps you could call it that. First of all, Mr. Belcher was located in New York. I spent most of my time in Detroit. I was not in New York a great deal of the time. And Mr. Belcher was there to handle, as I have indicated, complaints, primarily.

"Q And was he acting on behalf of General Motors when he handled these complaints?

"A He was expediting the satisfactory solution to the complaints.

"Q Complaints that came into your office?

"A That's right.

"Q And he was allowed to do --

"Mr. Kleinbard: I believe you previously identified them as service complaints, did you not?

"The Witness; Service complaints, yes.

"Q Did he handle any other complaints other than service complaints?

"A Not to my knowledge, although occasionally

MR. PERSON: I am trying to --

THE COURT: Can't we get to the point? Is there a point to get to here?

MR. PERSON: We are heading for it rapidly, your Honor.

THE COURT: All right.

MR. PERSON: Are you telling me to skip over this material now?

I think it is pretty uninteresting.

The deposition goes to 83 pages. Somewhere in here you must come to the point you want to address. Let's get to that.

MR. PERSON: I would like the references to Mr. Belcher still put on the record. Page 36, line 6 through the end.

"Q Was Mr. Belcher the highest person in your office in your absence normally?

"A You mean in the General Motors' offices in New York?

"Q Yes.

"A No.

"Q Who was above him in your own office, the office of the president?

"A He was the only person,he was really the only person in the physical location of the general vicinity of the office. But there were other people in General Motors that were in a higher position than Mr. Belcher.

"Q In that building?

"A In that building, that's right.

"Q But not in your office?

"A Well, there wasn't anybody in my office except me.

"Q Or Mr. Belcher?

"A Mr. Belcher was never in my office."

THE COURT: Let's skip 37. It is all so obvious.

MR. PERSON: Page 39 line 19:

"Q Did you receive any complaint? That is, did the screening system allow you to receive any complaints at all during your presidencey?"

MR. KLEINBARD: I object to that for the reasons stated, your Honor.

MR. PERSON: I went on to then inquire --

THE COURT: Overruled.

Page 40. You read that. I assume you want to read page 40.

MR.PERSON: Correct.

THE COURT: Go ahead.

"Q Did you receive any complaints that any person was not able to purchase cars for resale without some interference during your presidency?

"A Not to my recollection.

"Q Is that a kind of complaint that should have gone to you if it had been made during your presidency?

"A It could or it could have been referred to a division. It would depend on the type of complaint.

"Q If Mr. Belcher were to receive that type of complaint, would he pass it on to you?

"A No, he would refer to the division or distribution staff."

Page 43:

"Q Do you recall what communication, if any, General Motors had with its dealers after and as a result of the entry of this judgment against General Motors in August, 1966 relating to compliance?

"A I can't give you the specific details of whatever the communications were, but as I indicated earlier, it would be our practice under these circumstances to communicate with our field personnel, who were contacting dealers, and who had the responsibility for administering our activities in this area, and also to the extent that it would be appropriate, to communicate with the dealers our ideas and our policy with respect to any matter of this kind.

"Q Do you know how many communications there were with the various dealers of GM concerning this?

"A I would have no idea as to the numerical number. I presume that probably all of the dealers were notified.

"Q Do you know if they were notified more than once?

"A I can't answer that now. I would be inclined to think only once."

MR. PERSON: Page 57, line 5 through 25:

"Q When did you first hear of Nabcor?

"A I can't pinpoint the date, but probably some time around the middle of 1966.

"Q Do you recall how this developed, where you first became aware of Nabcor?

"A My recollection is that one of the field men sent him an advertisement or something about it, but again, I am not absolutely certain of that.

"Q Do you recall what, if anything, you did